TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted] 174

SAMUEL D. GROMER, TREASURER OF PORTO RICO, APPELLANT,

vs.

STANDARD DREDGING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

FILED DECEMBER 16, 1909.

(21,933.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 387.

SAMUEL D. GROMER, TREASURER OF PORTO RICO, APPELLANT,

vs.

STANDARD DREDGING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 15, 1910.

1 THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a Stated Term of the District Court of the United States for Porto Rico, within and for the District Aforesaid, Begun and Held at the Court-rooms of said Court, in the City of San Juan, on the Second Monday of April, Being the Twelfth Day of That Month, in the Year of Our Lord One Thousand Nine Hundred and Nine, and of the Independence of the United States of America the One Hundred and Thirty-third.

Present, the Honorable Bernard S. Rodey, Judge.

Among the proceedings had was the rendition of a Final Decree in the following case, to wit:

THE STANDARD DREDGING COMPANY
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico.

Be it remembered that heretofore, to wit: on the twenty-third day of March, A. D. 1909, came the complainant by its solicitors and filed its Bill of Complaint in this cause, which said bill is as follows, to wit:

No. 615. Eq.

THE STANDARD DREDGING COMPANY, Complainant,
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico, Defendant.

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico:

2 The above named complainant brings this its bill of complaint against the above named defendant, and thereupon it alleges:

I.

That the said complainant is a corporation duly incorporated in and doing business by virtue of the laws of the State of Delaware, and having its principal office and place of business at the city of Wilmington, in said State; that the said defendant, Samuel D. Gromer, is the duly appointed, qualified and acting Treasurer of Porto Rico and as such is exercising all of the functions and performing all of the duties of that office, and that the matter in dispute herein and for which relief is sought exceeds, exclusive of interest and costs, the sum of One Thousand Dollars.

II.

That heretofore and prior to the first day of April, 1908, the complainant Company entered into a certain contract and agreement

with the United States of America, by virtue of which said contract and agreement the said complainant obligated itself, in consideration of the payment to it by the said United States of America of certain sums of money, to perform certain services in connection with the dredging of certain portions of the harbor area of the harbor of San Juan, Porto Rico, and the channel leading from the ocean to the said harbor area. That by virtue of the requirements of the said contract your orator did, prior to the said first day of April, 1908, bring to and within the said harbor area of the said harbor of San Juan certain boats and machinery, to be used by it in connection with its operations under the said contract, to-wit, one dredge, one tug boat, two scows for dumping material to be removed, one coal scow, and one launch. That the said machinery and boats so
3 brought by the said complainant and used in connection with its operations under said contract in the said harbor area of the harbor of San Juan were and are the property of the said complainant Company, and since the same were so brought to the said harbor area the same have been constantly used by the said complainant and engaged in its operations in carrying out its said contract with the said the United States; and the same have not been used in connection with any other business or operations whatsoever, and the same have at all times been entirely within the said harbor areas where the said operations under said contract were so being carried on. And your orator further states that it has not conducted or carried on any business in Porto Rico or in the waters adjacent thereto, except the said operations under the said contract with the United States aforesaid.

III.

Your orator further alleges that the said defendant, acting as the Treasurer of Porto Rico and pretending to act under and by virtue of the provisions of the Revenue Laws of Porto Rico, did as of the date of April 1st, 1908, assume and pretend to levy and assess the hereinbefore described property of your orator for taxation under the laws enacted by the Insular Government of Porto Rico, and did so assume to assess and levy upon said property as of the value of Seventy-Five Thousand Dollars ($75,000) the total amount of the said tax so attempted to be levied and which the said defendant is now attempting to collect from your orator for the fiscal year 1908-9 amounting to the sum of Twelve Hundred Dollars ($1200). And your orator alleges that in pursuance of the said attempted levy and assessment of said property by the said defendant, the said defend-
ant and his agents, still assuming and pretending to act by
4 virtue of the Revenue Laws of Porto Rico, are seeking to enforce against your orator the collection of the said tax of Twelve Hundred Dollars ($1200), and to that end said defendant and his said agents have levied an embargo on part of the said property of your orator and are threatening to foreclose the same and to sell the said property for the purpose of enforcing the collection of the said alleged tax.

IV.

Your orator further alleges that the said action of the said defendant and his agents, in attempting to levy the said tax against your orator's property was acting in an illegal manner; that the levy of the said tax on your orator's property was illegal and the collection thereof would be illegal; that by virtue of the laws of the United States and of Porto Rico, and especially by virtue of those acts and proclamations of Congress and of the President of the United States creating reservations in and about the Island of Porto Rico, that the Insular Government of Porto Rico is not authorized to levy or collect any tax in connection with property the status of which is within such reservation, or within any navigable waters of harbor areas of the said Island of Porto Rico; and that the said property of your orator has never been brought within the jurisdiction of the said Insular Government of Porto Rico nor is the property of your orator subject to any lien or burden of taxation while being employed in the performance of its said contract with the United States of America and within the said harbor area.

V.

Your orator further alleges, as it has hereinbefore alleged, that the said defendant and his agents have levied an embargo upon a portion of the said property of your orator, and that they are seeking and threatening to enforce the collection of said tax so illegally levied, by the sale of the said property; and that unless the said defendant shall be restrained by the order of this Honorable Court he will proceed to enforce the collection of the said tax so illegally levied, to the great injury and loss of your orator.

Your orator alleges that it is entirely without any remedy at law in connection with the foregoing matters and things; that it is compelled to resort to a court of equity for the protection of its interests and to the end that your orator may have that relief to which it is entitled and which can only be granted in a court of equity. Your orator prays that the said defendant may be called upon to make answer to this your orator's bill of complaint, but not upon oath (answer under oath being hereby expressly waived), and thereupon your orator prays the Court:

First. That a temporary restraining order may issue out of and under the seal of this Honorable Court directing, commanding, and enjoining the said defendant, his agents, servants, and all others acting under his authority as the said Treasurer of Porto Rico, that they do absolutely desist and refrain from seeking to enforce or attempting to collect the said tax so levied against the property of your orator, and that they be further commanded to desist and refrain from taking any steps or measures or action whatever looking to the enforcement or collection of the said tax.

Second. That upon the final hearing of this action that the said injunction may be made permanent.

Third. For the costs of this proceeding.

6 Fourth. And it may please Your Honor to grant unto your orator a writ of subpœna issued out of and under the seal of this Honorable Court, to be directed to the said defendant, Samuel D. Gromer, commanding him under a certain penalty stated in said writ to be and appear before this Honorable Court on a date to be named therein, and then and there true and perfect answer make to all and singular the matters and things alleged in the foregoing bill of complaint, and to abide such further orders, directions, and decrees as to Your Honor may seem meet and as shall be applicable to equity and good conscience; and

Fifth. That your orator may have and receive at the hands of the Court such further and additional relief in the premises as equity and good conscience directs it to receive.

And your orator will ever pray.

HARTZELL & RODRIGUEZ SERRA,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Island of Porto Rico, ss:

Charles W. Eaton, being first duly sworn on his oath, deposes and says: That he is the President of the above named complainant Company; that he knows the contents of the said bill of complaint, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief; that as to such matters and things he verily believes the same to be true, and that he makes this verification on behalf of the said complainant Company.

CHARLES W. EATON.

7 Subscribed and sworn to before me by Charles W. Eaton, of full age, resident of this city, *to* whom I personally know, this 23 day of March, 1909.

F. RAMIREZ DE ARELLANO,
[NOTARIAL SEA-.] *Notary Public.*

No. 28.

Order for Rule to Show Cause.

(Filed March 23, 1909.)

At Chambers.

No. 615. Equity.

THE STANDARD DREDGING COMPANY
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico.

Charles Hartzell, one of the solicitors for the complainant having read the bill which has just been filed in the above-entitled matter, and the Court having heard him ex parte, in that behalf, it is:

Ordered that a rule to show cause issue against the respondent returnable on Friday, the 26th instant at ten o'clock A. M., in the usual form, without bond.

B. S. RODEY, *Judge.*

Order to Show Cause.

(Issued March 23rd, 1909.)

No. 615.

THE STANDARD DREDGING COMPANY
vs.
SAMUEL D. GROMER, Treasurer.

8 To Samuel D. Gromer, Treasurer of Porto Rico, Greeting:

Order to Show Cause.

It appearing from the bill filed in the above entitled cause that you, the said respondent, Samuel D. Gromer, as Treasurer of Porto Rico, are, as it is alleged, in your official capacity, illegally attempting to collect a tax against the property of the complainant company, which, it is alleged, has never been brought within the jurisdiction of the Island of Porto Rico, and is not in fact subject to any tax at all in said Island;

Now, therefore, without deciding any matter as to the rights of the Island in that behalf, you, the said respondent, leaving all other matters aside, are hereby commanded to show cause, if any you have, before this Court, at ten o'clock A. M. on Friday, the 26th day of March instant, why a restraining order should not be issued in the premises, if it shall be decided that as matter of law the Island is not entitled to levy or collect any tax against the property of the complainant Company. And this you do under penalty of the law.

Witness the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, and the seal of said Court, at my office in San Juan, in said District, this 23d day of March, A. D. 1909.

Attest:

[Seal of the Dist. Court of the United States for P. R.]

JOHN L. GAY, *Clerk.*

9 *Return on Service Writ.*

(Filed March 24, 1909.)

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Samuel D. Gromer Treasurer of Porto Rico

by handing to and leaving a true and correct copy thereof with him personally at San Juan in said District on the 23rd day of March, A. D. 1909.

H. S. HUBBARD,
U. S. Marshal,
By JOHN L. HAAS,
Deputy.

Subpœna.

(Issued March 23d, 1909.)

No. 615.

THE STANDARD DREDGING COMPANY
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States to Samuel D. Gromer, as Treasurer of Porto Rico, Greeting:

You are hereby commanded that you be and appear in the said District Court of the United States for Porto Rico, aforesaid, at the court-room of said Court in the City of San Juan, on the first Monday in May 1909, the same being the third day of that month, then and there to answer a certain Bill in chancery exhibited against you in said Court by The Standard Dredging Company, and to do and receive what the said Court shall have considered in that behalf, and this you are not to omit under penalty of five thousand dollars ($5,000.00).

Witness, the Hon. Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, this 23d day of March A. D. 1909; and in the 133rd year of the Independence of the United States of America.

Attest:

[COURT SEAL.]

JOHN L. GAY, *Clerk,*
By A. M. BACON, *Deputy.*

Memorandum.

(Pursuant to Rule 12, Supreme Court U. S.)

You are hereby commanded to enter your appearance in the above entitled suit on or before the first Monday in May next, the same being the 3d day of said month, A. D., 1909, at the Clerk's office of said Court, pursuant to said Bill; otherwise the said bill may be taken pro confesso.

JOHN L. GAY, *Clerk,*
By A. M. BACON, *Deputy.*

Received this writ on the 23rd day of March, A. D. 1909. And on the 23 day of March, A. D. 1909, I served the same by handing a true copy thereof together with copy of complaint to the said S. D. Gromer, as Treasurer of Porto Rico.

H. S. HUBBARD, *Marshal,*
By JOHN L. HASS, *Deputy.*

11 *Demurrer.*

(Filed April 1, 1909.)

No. 615. In Equity.

THE STANDARD DREDGING COMPANY, Complainant,
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico, Defendant.

The Demurrer of the Above-named Defendant, Samuel D. Gromer, Treasurer of Porto Rico, to the Bill of Complaint of the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill and for cause of demurrer showeth;

First. That it appears by the complainant's own showing by the said bill, that he is not entitled to the relief prayed by the bill against this defendant.

Second. That the bill of complaint does not state facts sufficient to constitute a cause of action.

Third. That said bill of complaint of the plaintiff is wholly without equity.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto. And he prays the judgment of this Honorable Court whether he shall be compelled to make any answer to the said bill: and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

J. H. BROWN,
Acting Attorney General of Porto Rico.

12 ISLAND OF PORTO RICO,
Municipality of San Juan:

Samuel D. Gromer, Treasurer of Porto Rico, makes solemn oath and says that he is the above named defendant, and that the foregoing demurrer is not interposed for delay, but that the same is true in point of fact.

SAMUEL D. GROMER,
Treasurer of Porto Rico.

Sworn to and subscribed before me this 1st day of April, A. D. 1909.

JOSE BAZAN,
Justice of the Peace, San Juan.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

J. H. BROWN,
Of Counsel for Defendant.

13 *Opinion Overruling Demurrer.*

(September 11, 1909.)

No. 615. Equity.

THE STANDARD DREDGING COMPANY, Complainant,
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico, Respondent.

This is a bill in equity brought by the complainant in an effort to enjoin the respondent as Treasurer of Porto Rico, from collecting taxes against its property. It alleges in substance, that complainant is a Corporation of the State of Delaware doing business under its laws with its principal place of business in the city of Wilmington in said State. That prior to April 1st, 1908 it entered into a contract with the United States of America, to perform certain services connected with the dredging of certain portions of the harbor of San Juan, Porto Rico, and the channel leading from the ocean into the same. That by virtue of the requirements of said contract complainant, prior to April 1st, 1908, brought from the State of Delaware into the harbor aforesaid the following property belonging to itself, that is to say: a dredge, a tug-boat, two mud scows, a coal scow and a launch, and have continuously since that date used the same in and about its operations in carrying out its said contract with the United States Government, and for no other use or purpose; and that all of said property has at all times remained in and upon said harbor area. That all of the material dredged from the bottom of the entry-way or channel from the ocean to the bay and from out of the bottom of the harbor area, is towed outside and dumped in the Atlantic
14 Ocean. The bill further alleges that complainant conducts no other business of any kind or character in Porto Rico or in the waters adjacent thereto. That therefore, complainant has no connection of any kind or character with the government of the island of Porto Rico, and has not brought any of its said property within the taxing jurisdiction thereof, nor is the situs of any of said property for taxing purposes in said Island. It is further alleged, that subsequent to April 1st 1908, the respondent as such Treasurer of Porto Rico, pretended to assess and levy a tax against said property, under the taxing laws of Porto Rico, and was threatening to enforce the collection of the same by a sale of said property at the time this suit was filed.

The Insular Government by its Attorney General demurred to this complaint, on the ground: That the bill itself shows that complainant is not entitled to the relief prayed for; that it is without equity; and does not state facts sufficient in law to constitute a cause of action.

The issue thus raised is indeed an interesting one. Counsel on both sides in addition to arguing the matter orally with ability, have filed strong written arguments and briefs. We have given careful attention to the positions urged and can truthfully state that it has seldom been our lot to examine abler efforts in urging views upon a Court. Whilst an examination of the adjudicated cases these arguments have referred us to, have been very enlightening on the important subjects involved, it has also enabled us to reduce the contentions to a few well settled propositions of law, to which we will endeavor to apply the admitted facts in order to enable us to decide the issue in accordance with settled law, as we believe it to have been expounded by the Supreme Court of the United States.

Complainant as well as the respondent Treasurer being
15 citizens of the United States, and the real respondent behind the Treasurer being the Government of Porto Rico, and the amount involved being a tax of $1200, it would seem as if the jurisdiction here could not be questioned, because the citizenship of the parties is certainly diverse, and the amount involved exceeds "exclusive of interest and costs the sum or value of one thousand dollars."

It surely is not necessary to cite authority for the proposition that ordinarily where there is an adequate remedy at law, a Court of Equity is without jurisdiction to enjoin the collection of a tax. But we take it, that on principle neither can it be gainsaid, that where the allegation is, that the tax is wholly unwarranted by law, and its collection is attempted by a sovereign or a quasi-sovereign power that cannot be sued without its consent, a court of Equity is the proper and only Tribunal to afford proper relief in the first instance by enjoining the unlawful collection. In such a case a Court of Law cannot adequately deal with the situation. See Cooley on Taxation, 2nd Ed. p-. 760-61 and cases cited from the State of Illinois, and many other States in note 1 to the text. This we think disposes of the question of our jurisdiction on the grounds referred to, and leaves to be decided only the question as to whether under the allegations of the bill the property in question under the circumstances is subject to or can be taxed in Porto Rico?

It has, we think, been settled by numerous recent decisions of the Supreme Court of the United States, that the old rule of personal property following the domicil of the owner, has been so varied and departed from, as that it does not mean much at the present time.

The real question to be decided in every such case being
16 whether the personal property, be the same rolling stock, machinery, merchandise or even floating property such as steamships, boats or dredges, has been brought within the taxing jurisdiction of the Government attempting to levy the tax. In other words it must always be determined that the situs of the property is

within the taxing jurisdiction. See Old Dominion Steamship Co. v. Virginia, 198 U. S. 299 and the many cases cited. Also Ayer & Lord Tie Co. v. Commonwealth of Ky. 202 U. S. 409 and cases cited, and Metropolitan Life Insurance Co. v. New Orleans 205 U. S. 395 and citations.

Not that it has arisen in this case on the allegations of the bill,—the fact that we have no knowledge on the subject,—and cannot presume any wrongful intention against complainant, but because under the circumstances it might be well to note it at this place,—that an attempt to escape property taxation in one State, does not as a general rule confer jurisdiction on another State not the residence or domicil of the owner and within the taxing jurisdiction of which the property in question has not been brought to tax such property. See Buck v. Beach, 206 U. S., 392. Therefore, the control-ing point here as it appears to us, is: Can the Government of Porto Rico tax property belonging to a citizen of Delaware, that has been merely brought into the harbor of San Juan in compliance with a contract entered into with the Government of the United States to dredge the government's own harbor and the channel from it to the ocean, the work being paid for entirely by the United States itself and the dredge, tug, and scows, used in and about the work never having landed on the island, or the shores of the bay or harbor but remaining in the harbor area (the launch only being used to communicate with the shores) and being continuously used
17 there and having absolutely no connection of any kind or character with the Insular Government and presumably receiving no protection of any kind or character from it?

It is perhaps proper to notice at this point, that the power of taxation is exercised upon the assumption of an equivalent rendered in the protection of the property and person of the tax-payer, and if such equivalent cannot possibly be rendered because the property taxed is wholly beyond the jurisdiction of the taxing power, the taxation thereof amounts to the taking of property without due process of law. This is what we think is the rule laid down by the Supreme Court of the United States in Union Refrigerator Transit Co., v. Kentucky, 199 U. S. 194.

This Court after careful consideration in the case of U. S. v. Hernandez, 2 P. R. Fed. 81, held that it has exclusive jurisdiction of offenses committed within the military and other national occupied reserves in Porto Rico. In the light of the arguments we used in that opinion we think it fair to assume, that while the local Insular Government, in the absence of action by Congress, may make harbor rules and regulations not inconsistent with national law for the government of ships in the harbors of Porto Rico, still the local government has no jurisdiction over such waters in the sense of a power to tax property belonging to a citizen of a State of the Union, when such property has never been landed on the actual shores of the island and is used exclusively in and about the execution of a contract with the National Government and there is no fact or circumstance connected with the property to fix its situs in Porto Rico in the taxing sense. This Court and not the insular courts is vested

with admiralty jurisdiction in Porto Rico. Sec. 34, "Foraker
18 Law" 31 Stats. 84. See opinion Att'y Gen'l U. S. in Subig Bay matter (Philippines) 26 Opinions Att'y Gen'l 91. In Porto Rico, all harbor areas, navigable streams and bodies of water and the submerged lands underlying the same are national property, over which the national government has not only the same "commerce clause" power and jurisdiction that it has as to similar locations in the several States of the Union, but also must we submit be conceded to have whatever additional powers over the same the fact of being such owner as well as being absolute sovereign over the whole Island gives it. U. S. v. Hernandez, supra, and Section 13, Foraker Law supra; also Act of Congress, July 1st, 1902, 32 Stats. 731. Hence how can it be, that property of complainant here, which in the nature of things gets no protection of any kind or character from the Insular Government as an equivalent, can be taxed? We might remark incidentally that the dredge in question is located in the bay in full view of our chambers as we write, and that it not only contains the derrick and machinery but a two-story boarding house, so it seems even the help or workmen only come ashore as visitors, and this was virtually admitted on the arguments.

In a State, which within itself is absolutely sovereign save for the rights and powers it has delegated to the national government, the taxing power when it does not interfere with the commerce clause or the due process of law clause of the constitution is not limited. See Braxton County Court v. West Virginia 208 U. S. 192.

In a territory that is not even incorporated into the United States, the taxing power can be scrutinized, and the local government will be confined within the powers conferred upon it by the national government. In States of the Union the taxing power is not interfered with by the nation unless it affects instrumentalities of
19 the national government itself. We think in the case at bar the effect of the effort of respondent is to do that very thing, and hence the duty of this Court when that appears, is to say, hands off. On the facts set out in the bill and admitted in the argument we are utterly unable to see that the Insular Government has anything to do with the property in question, or that it is in a position to give any equivalent for a right to tax it.

As before intimated, whether this property actually escapes taxation in the State of Delaware, although we understand its tug boat is registered there, is not the affair of the Court or of respondent, nor can we take that into account even should it prove to be the fact, in this controversy.

We have been cited to many cases from some of the former Western territories, in which the local territorial governments were sometimes held to have power to tax cattle and other property pasturing or situated on and used wholly on or within Indian reservations; but it will be seen that such cases almost invariably turn on the question as to whether by the different Organic Acts, such reservations were within or without the outer boundaries of the particular territory. We cannot find that any of them are in point as authority under circumstances such as surround the case at bar, where the

waters and the lands under the same are national property and the work being done is for the national government itself.

In the Hernandez case supra, we pointed out that on February 16th, 1903, Session laws page- 110-11-12 the Legislative Assembly of Porto Rico, passed a rather comprehensive Act ceding exclusive jurisdiction to the United States over any and all land that might be thereafter acquired by it in the island of Porto Rico, by pur-
20 chase or condemnation, and over any and all lands and the shores thereof including streets and other public highways conveyed to it by the Governor of Porto Rico under the provisions of that act; and over any and all lands in which any interest or claim of the People of Porto Rico might thereafter be released to the United States by the Government of the Island, as provided in that act, etc. It appears to us that it would indeed be a useless proceeding for the Legislative Assembly of Porto Rico, to thus cede to the United States exclusive jurisdiction over lands which it was assumed the island had some interest in, unless it was also at the same time assumed that the National Government already had exclusive jurisdiction over all other national property which it received under the Treaty of Paris, from Spain, and had never transferred to the Insular Government, and in this would of course be included all the harbor areas and navigable streams and bodies of water, and the submerged lands underlying the same, owned by the United States in Porto Rico, and not reserved to the nation under the act of Congress of July 1st 1902 (32 Stats. 734). See also our opi-on in Valdes v. Grahame 3 P. R. Fed. 422 where this point is considered.

Among the many cases we have been referred to, the two most nearly approaching the contention of the island here, are those of the National Dredging Co. v. State, from the Supreme Court of Alabama, reported in 12, So. Repr. 720, and Northwestern Lumber Co. v. Chehalis county, from the Supreme Court of the State of Washington, reported in 54 L. R. A. 212, and in which latter the Alabama case is referred to and approved. However, an examination of those cases will show, that in each of them the land under-
21 lying the navigable waters in the bay was property of the State itself; while in the case at bar, as stated, the title to such land still remains in the National Government. This cuts quite a figure as will be seen by an examination of the case of the Central Railway Co. of New Jersey v. Jersey City, 209 U. S. 473, where it was held that "Jurisdiction" in compacts between States, has a more limited sense than "sovereignty" and while in 1833 the State of New Jersey gave excl-sive jurisdiction to the State of New York over waters of the Hudson river west of the boundary line fixed by the agreement as the boundary line between the States, still the land underlying the waters of the New Jersey side of such actual boundary line, remained the property of the State of New Jersey. By analogy here, it would seem that because for the purposes mentioned, such as the making of harbor regulations, etc., the Insular Government of Porto Rico may have more or less jurisdiction in the bay of San Juan, still because it has absolutely no admiralty powers or jurisdiction therein nor any title to the land underlying such navi-

gable waters and cannot issue clearance papers or sailing licenses or certificates of inspections of steam boilers in boats, etc. it ought not to be held to be in a position to give an equivalent for taxing property used wholly within such harbor area and on the ocean outside by a non-resident, in executing a contract for the national government. Valdes v. Grahame, 3 P. R. Fed. 417 supra, and cases cited.

It will also be noticed when examining the National Dredging Co. case, from the State of Alabama, supra, that at least one of the scows and perhaps other property used in the dredging for the national government in Mobile bay, were made right there in
22 the State of Alabama, and that all of the property involved in that suit had remained there for four or five years, and that under the circumstances (the appropriations being made by Congress were apparently annual ones) it was natural to presume that the property would be kept there for several years more, and its owners would become bidders upon future contracts for additional dredging work there, and keep the property indefinitely in that State,—so that in that case there was no difficulty in fixing the situs of the property, because the property was clearly within the jurisdiction of the State of Alabama and the taxing power thereof. The Court found that the property was not in that State temporarily but indefinitely.

In the other case,—Northwestern Lumber Co. v. Chehalis county, from the Supreme Court of the State of Washington, it will be seen on an examination of it, that the court said:

"Sound reasons exist for the right of the State to tax these vessels that are permanently here transacting local business. They receive the full protection of the local government, and if mere registry in another port is conclusive against the right to tax here, a boat can operate in our local waters confined entirely to local business, and, if owned elsewhere may evade all taxation in this State."

The tugs involved in that case had been in that State from four to seven years, engaged in private business, not as here working under a contract for the national government. Their owners had been engaged in that State for 15 years running large saw mills, and owned large areas of timber lands and manufactured from twenty to thirty million feet of lumber annually. The tugs were to all intents and purposes property with its permanent situs in the State of Washington, and the owners tried to escape taxation
23 by simply having them registered somewhere else, which of course as was properly held could not be done. We do not think either of the cases strong though as they are, can be said to be parallel with conditions in the case at bar. We understand that the work in question is now practically completed, and that complainant is about to remove the property from Porto Rico.

Nothing we have said in this short review of this important subject can in any manner be taken as limiting the right of the Government of Porto Rico in a proper case, to tax tug-boats, steamships, sail boats and all other sorts of craft that move about in the harbors, bays or inlets of the island and do business locally from place to place, if the situs of the property is here and the business done is of a private

character between individuals. It was intimated on the hearing that our ruling in this case if against the Insular Government would by implication prevent the Insular Government from taxing personal property, ships and boats in many other cases. We cannot admit that the ruling will necessarily have any such result. Each case must stand or fall as the facts surrounding it may warrant.

We have in this review cited but few cases. There are many issues and questions of law that are presented in the briefs of counsel, that while instructive have no real bearing upon the single, real issue here,—but the cases we have cited refer to most of them, and they can be seen by those interested in the subject.

We are therefore of opin-on that the complainant is properly in this court of Equity to enjoin the collection of a wholly illegal and unwarranted tax against it. That its property for the reasons stated has no situs within the taxing jurisdiction of the
24 Government of Porto Rico. That this holding is not intended to preclude the Government of Porto Rico from taxing this same complainant or any other complainant for the same or other property hereafter, if a situs is obtained with regard to it within the taxing jurisdiction of the Government, by doing work for private individuals or by doing work in un-avigable waters, or on land, or by purchasing locally manufactured dredges or tug boats or in any other manner bringing the property within the actual taxing jurisdiction of the local government. The demurrer will therefore be overruled and an order to that effect will be entered.

B. S. RODEY, *Judge.*

Journal Entry, September 11, 1909.

No. 615. Equity

THE STANDARD DREDGING COMPANY
vs.
SAMUEL S. GROMER, Treasurer of Porto Rico.

This cause having been heretofore submitted on the issues raised by the demurrer to the bill of complaint, the Court now on this day sends and opinion to the files giving its views in that regard, and its reasons for its action, and in accordance therewith, it is:

Ordered and adjudged that the said demurrer be, and the same hereby is overruled. To which action of the Court in so overruling said demurrer the defendant by his counsel W. N. Landers representing the Attorney-General of the Island, then and there duly objects and excepts.

25 Journal Entry, September 25, 1909.

615. Equity.

STANDARD DREDGING COMPANY
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico.

In the above entitled cause on September eleventh instant the Court sent its opinion to the files overruling the demurrer of the respondent to the bill of complaint, to which action of the Court the respondent, through his counsel, the Attorney-General of Porto Rico, then and there duly objected and excepted, and thereafter took time to further plead in the cause, and:

Whereas on this day the said respondent through his said counsel states that he will not further plead in the cause but elects to stand on the record as made;

Now, therefore, in order to complete the record, it is Ordered, Adjudged and Decreed that said Samuel D. Gromer and his successor in office as such Treasurer of Porto Rico be and he hereby is perpetually enjoined from attempting to, or in fact levying or collecting any taxes as set forth in the bill of complaint, against the dredge, tug-boat, scows, coal-scow, and launch of the complainant as set out and described in the bill, and it is:

Further Ordered and Adjudged that the Plaintiff, the Standard Dredging Company, do have and recover of and from the respondent, Samuel D. Gromer, as Treasurer of Porto Rico, its costs in that behalf laid out and expended, to be taxed; but that no execution may issue therefor, save on a showing and on application to the Court. To which action of the Court in thus enjoining the levying and collection of the taxes in the premises, and to adjudging costs against the respondent, the latter by his said counsel then and there duly objects and excepts.

26 *Petition for Appeal.*

(Filed October 26, 1909.)

Equity.

THE STANDARD DREDGING COMPANY, a Corporation, Complainant,
vs.
SAMUEL D. GROMER, Treasurer of Porto Rico, Defendant.

For an Injunction.

To the Honorable Bernard S. Rodey, Judge of the above entitled Court:

The above named defendant in the above entitled cause, conceiving himself aggrieved by the order and decree made and entered by the above entitled Court in the above entitled cause, under date

of September 25, 1909, wherein and whereby, among other things, it was and is ordered, adjudged and decreed that Samuel D. Gromer, Treasurer of Porto Rico, and his successor in office as such Treasurer of Porto Rico, be and hereby is perpetually enjoined from attempting or in fact levying or collecting any taxes as set forth in the bill of complaint against the dredge, tugboat, scows, etc., property of complainant described in said complaint, and that complainant's costs in the case be paid by the said defendant, does hereby appeal to the Supreme Court of the United States from said order and decree for the reasons set forth in the assignment of errors which is filed herewith; and prays that this his petition for said appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Supreme Court.

Dated at San Juan this 26th day of October, 1909.

J. HENRI BROWN,
Acting Attorney General of Porto Rico and
Attorney for Defendant and Appellant.

27 Service by receipt of copy of within Petition for appeal, acknowledged this 26th day of October, 1909.

HARTZELL & RODRIGUZ SERRA,
Attorney- for Complainant.

(Filed October 26, 1909.)

Equity.

THE STANDARD DREDGING COMPANY, a Corporation, Complainant,
vs.
SAMUEL D. GROMER, Treasurer of Porto Rico, Defendant.

For an Injunction.

Order.

At a stated term, to wit, the October term, A. D. 1909, of the District Court of the United States for the District of Porto Rico, held at the court-room of the city of San Juan, within said district, on the twenty-six day of October, 1909.

Present, the Honorable Bernard S. Rodey, District Judge for the said district.

On motion of J. Henri Brown, Assistant and Acting Attorney General of Porto Rico and counsel for defendant, it is ordered that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein on the 25th day of September, 1909, be and the same is hereby allowed, and that a certified transcript of the record, papers and all proceedings herein in-

cluding the Court's opinion be forthwith transmitted to the Supreme Court of the United States.

It is ordered further that the bond on appeal be fixed at the sum of two hundred and fifty dollars, the same to act as a bond for costs and expenses on appeal.

B. S. RODEY, *Judge.*

28 (Filed October 26, 1909.)

Equity.

STANDARD DREDGING COMPANY, a Corporation, Complainant,
vs.
SAMUEL D. GROMER, Treasurer of Porto Rico, Defendant.

For an Injunction.

Assignment of Errors.

Comes now the above named defendant, Samuel D. Gromer, as Treasurer of Porto Rico, and files the following assignment of errors, upon which he will rely upon his appeal from the final decree made by this Honorable Court on the 25th day of September, 1909, in the above entitled cause.

The District Court of the United States for the District of Porto Rico, which entered the decree perpetually enjoining the Treasurer of Porto Rico from attempting or in fact levying or collecting taxes upon the property as set forth in the bill of complaint in the above entitled cause, erred as follows:

I.

That the Court erred in overruling the demurrer of the defendant, Samuel D. Gromer, Treasurer of Porto Rico.

II.

That the Court erred in holding that complainant has stated in his bill such a cause of action as entitles it to the relief prayed for in the bill.

III.

That the Court erred in holding that complainant did not have an adequate remedy at law.

IV.

That the Court erred in deciding that the Insular Government of Porto Rico cannot tax property that has been brought
29 into the Bay of San Juan to be used exclusively in the execution of a contract with the United States Government, duration of the stay of the property in the Bay of San Juan being indefinite.

V.

That the Court erred in deciding that property used in the Bay of San Juan by a government contractor, the duration of its stay in said Bay being indefinite, is not within the taxable jurisdiction of the Island of Porto Rico.

VI.

That the Court erred in holding that the levying and collecting of a tax upon the property described in the bill of complaint affects instrumentalities of the National Government, and therefore the Insular Government of Porto Rico had no power to levy and collect the same.

VII.

That the Court erred in holding that the property of complainant can receive no protection of any kind or character in return for the taxes attempted to be levied and collected, because the property is wholly beyond the police jurisdiction of the Insular Government.

VIII.

That the Court erred in holding that the Insular Government has no jurisdiction over the harbor areas and navigable streams of Porto Rico in the sense of a power to tax property used exclusively in and about the execution of a government contract, the duration of the stay of the said property in said waters being indefinite.

IX.

The Court erred in holding that the levying and collecting of the tax upon the property described in the bill of complaint is an interference with the commerce clause of the Constitution, and that it is a taking of property without due process of law.

X.

That the Court erred in entering a decree perpetually enjoining Samuel D. Gromer, Treasurer of Porto Rico, the defendant herein and his successor in office as Treasurer of Porto Rico, from attempting or in fact levying or collecting any taxes upon the property described in the bill of complaint and taxing costs against defendant.

Wherefore, this defendant and appellant prays the Honorable the Supreme Court of the United States to examine and correct the errors assigned and for the reversal of the final decree of said United States District Court for Porto Rico, entered September 25th, 1909, in the above entitled cause.

J. HENRI BROWN,
Acting Attorney General of Porto Rico &
Attorney for Defendant and Appellant.

Service by receipt of copy of foregoing assignment of errors acknowledged this 26th day of October, 1909.

HARTZELL & RODRIGUEZ SERRA,
Attorneys for Complainant.

Journal Entry, November 17, 1909.

615. Equity.

THE STANDARD DREDGING COMPANY
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico.

Comes now W. N. Landers of the office of the Attorney General of Porto Rico, and in compliance with the order of the court in that regard, presents to the Clerk a certified check for two hundred and fifty dollars ($250.00) as a cost bond on appeal in the above entitled cause. The Clerk is directed to receive and deposit same in the Registry account of the Court.

31 *Præcipe for Transcript.*

(Filed November 17, 1909.)

No. 615.

THE STANDARD DREDGING COMPANY, a Corporation, Complainant,
vs.
SAMUEL D. GROMER, Treasurer of Porto Rico, Defendant.

To the Clerk of the above entitled court:

You will please prepare a transcript of the record in this cause, to be filed with the Clerk of the Supreme Court of the United States at Washington, D. C., under the appeal heretofore perfected to said Court, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

Bill of Complaint	Filed March 23, 1909
Order of Court that an Order issue to show cause	March 23, 1909
Order to show cause	March 23, 1909
Subpœna to S. D. Gromer, Defendant	March 23, 1909
Demurrer of Defendant	April 1, 1909
Opinion overruling Demurrer	Sept. 11, 1909
Journal Entry of	Sept. 11, 1909
Journal Entry of Final Decree	Sept. 25, 1909
Motion and Petition of Appeal and Journal Entry allowing said Appeal	Oct. 26, 1909
Assignment of Error	Oct. 26, 1909
Journal Entry of Filing Cash Bond on Appeal	Nov. 17, 1909
Copy of Præcipe	——, ——

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Supreme Court, and

transmit the same with proper certificate to the Clerk of the United States Supreme Court at Washington, D. C.

HENRY M. HOYT, 2D,
Attorney General of Porto Rico and
Attorney for Defendant and Appellant.

32 In the District Court of the United States for Porto Rico.

No. 615.

THE STANDARD DREDGING COMPANY
vs.
SAMUEL D. GROMER, as Treasurer of Porto Rico.

I, John L. Gay, Clerk of the District Court of the United States within and for the District of Porto Rico, do hereby certify the foregoing thirty-one typewritten pages, numbered from 1 to 31, inclusive, to be a true and correct copy of the record and proceedings in the above and therein entitled cause, as the same remains of record and on file in the office of the clerk of said court, as called for by the præcipe for transcript of record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this first day of December, A. D. 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of the United States for Porto Rico.

33 In the District Court of the United States for Porto Rico.

Equity.

THE STANDARD DREDGING CO., a Corporation, Complainant,
vs.
SAMUEL D. GROMER, Treasurer of Porto Rico, Defendant.

For an Injunction.

Citation on Appeal.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Standard Dredging Co. a corporation, plaintiff, and Charles Hartzell, its attorney of record:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the City of Washington, in the District of Columbia, on the twenty-sixth day of December, 1909, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court of the United

States for the District of Porto Rico, from a final decree signed, filed and entered on the twenty-fifth day of September, 1909, in that certain suit in equity No. 615, wherein Samuel D. Gromer, Treasurer of Porto Rico, is defendant and appellant and you are complainant and appellee, to show cause, if any there be, why the decree rendered against the said defendant and appellant as in the said order allowing appeal mentioned should not be corrected and speedy justice should not be done to the defendant on that behalf.

Witness the Honorable Bernard S. Rodey, United States
34 Judge for the District of Porto Rico, this 26th day of October, 1909, and of the independence of the United States the one hundred and thirty-fourth.

B. S. RODEY, *Judge.*

Attest:
JOHN L. GAY, *Clerk.*

Received copy and acknowledge service of the within citation this 26th day of October, 1909.

[Seal United States District Court for the District of Porto Rico.]

HARTZELL & RODRIGUEZ SERRA,
Attorney- for Complainant.

[Endorsed:] No. 615. Equity. In the District Court of the United States for Porto Rico. The Standard Dredging Co. (a Corporation), Complainant, vs. Samuel D. Gromer, Treasurer of Porto Rico, Defendant. 10/26. Citation on Appeal. J. Henri Brown, Act'g Attorney General of Porto Rico. Filed Clerk's Office, United States District Court. Oct. 26, 1909. John L. Gay, Clerk of the Court. By A. M. Bacon, Deputy.

Endorsed on cover: File No. 21,933. Porto Rico D. C. U. S. Term No. 387. Samuel D. Gromer, Treasurer of Porto Rico, appellant, vs. Standard Dredging Company. Filed December 16th, 1909. File No. 21,933.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 174

SAMUEL D. GROMER,
Treasurer of Porto Rico,
APPELLANT,
vs.
STANDARD DREDGING COMPANY.

Appeal from the District Court of the United States for Porto Rico.

MOTION TO ADVANCE.

To the Honorable the Supreme Court of the United States:

Now comes Samuel D. Gromer, Treasurer of Porto Rico, the appellant in the above entitled cause, and respectfully moves this Honorable Court to advance this cause upon the docket for hearing, upon the ground that the question at issue in this cause involves the jurisdiction of the government of Porto Rico to levy taxes upon property situate within the harbor areas on said Island, and to enforce the collection of taxes levied upon said property by appropriate proceedings.

Under the Organic Act of Porto Rico, approved April 12, 1900, all property which was acquired in Porto Rico by the United States under the cession of Spain, in the Treaty of Paris promulgated April 11, 1899, was placed under the control of the government of Porto Rico as established by said Act, reserving, however, "harbor areas" and "navigable waters" from such gift or trust, and granting to the legislative Assembly of Porto Rico general authority of legislation (Act of Congress approved April 12, 1900, sec. 13).

It is of importance that the question of the jurisdiction and authority of the government of Porto Rico in this matter should

be determined at an early date and the appellant be advised of his authority as Treasurer of Porto Rico. The appellant, therefore, respectfully prays that he may be heard upon the argument of the questions involved herein, and that this cause be advanced accordingly.

I am authorized to state that the Appellee, Standard Dredging Company, is advised of this motion and has consented thereto.

Respectfully submitted this 12th day of December, 1910.

PAUL CHARLTON,
Counsel for Samuel D. Gromer,
Treasurer of Porto Rico, Appellant.

BRIEF OF APPELLANT

IN THE

SUPREME COURT OF THE UNITED STATES.

SAMUEL D. GROMER, *Treasurer of Porto Rico,*
Appellant,

vs.

STANDARD DREDGING COMPANY, Appellee.

Appeal from the District Court of the United States for Porto Rico.

BRIEF OF APPELLANT.

STATEMENT OF THE CASE.

This is a suit in equity brought in the District Court of the United States for Porto Rico by the Standard Dredging Company, a Delaware corporation, defendant and appellee here, against the appellant, Samuel D. Gromer, as Treasurer of the Island of Porto Rico, seeking to enjoin the latter as Treasurer, his agents, servants, and all other persons acting under his authority as such Treasurer of Porto Rico, from attempting to enforce the collection of a property tax of $1,200, levied and imposed by him under and by virtue of

the revenue laws of Porto Rico upon certain personal property belonging to the appellee.

The property upon which the tax in question was levied is situated in the Harbor of San Juan, Porto Rico, and consists of one dredge, one tug-boat, three scows, and one launch, and is used by the appellee in the prosecution of a contract which it entered into with the United States Government for the dredging of said harbor.

The bill of complaint filed by the appellee alleges that at all times the said property which the Treasurer of Porto Rico is attempting to tax has been used by the appellee in its operations in carrying out its said contract with the United States Government, and that the property has not been used in connection with any other business or operations, whatsoever, and has at all times been entirely within the Harbor of San Juan, where the said operations under said contract are being carried on.

The bill of complaint further alleges that the levying of said tax on the property of appellee is illegal, and the collection thereof would be illegal; that by virtue of the laws of the United States, and of Porto Rico, and especially by those acts and proclamations of Congress and of the President of the United States creating reservations in and about the Island of Poro Rico, the Insular Government of Porto Rico is not authorized to levy or collect any tax in connection with the property, the location of which is within said reservation, or within any navigable waters or harbor areas of the said Island of Porto Rico; and that, inasmuch as said property has never been brought within the jurisdiction of the Government of Porto Rico, said property is not subject to any lien or burden of taxation while being employed in the performance of its contract with the United States Government and located entirely within the harbor area of the Harbor of San Juan.

The bill further alleges that the appellee is entirely without

any remedy at law; that it is compelled to resort to a court of equity for the protection of its interests, and that unless said appellant is restrained by an order of court he will proceed to enforce the collection of said tax to the great injury and loss of appellee.

The appellant demurred to the bill of complaint, and set up three specific grounds of demurrer, as follows:

(1) That it appears by the appellee's own showing by the said bill, that it is not entitled to the relief prayed by the bill against this appellant.

(2) That the bill of complaint does not state facts sufficient to constitute a cause of action.

(3) That said bill of complaint of appellee is wholly without equity.

Upon the hearing on the return day the Court granted a temporary injunction, as prayed for in the bill of complaint, and upon appellant's election to stand upon his demurrer, and his refusal to plead further to said bill of complaint, said injunction was made permanent; whereupon appellant took this appeal to the Supreme Court of the United States, alleging the following errors:

(1) That the Court erred in overruling the demurrer of the defendant.

(2) That the Court erred in holding that complainant has stated in its bill such a cause of action as entitles it to the relief prayed for.

(3) That the Court erred in holding that complainant did not have an adequate remedy at law.

(4) That the Court erred in deciding that the Insular Government of Porto Rico cannot tax property that has been brought into the Bay of San Juan to be used exclusively in the execution of a contract with the United States Government, the duration of the stay of the property in the Bay of San Juan being indefinite.

(5) That the Court erred in deciding that property used

in the Bay of San Juan by a Government contractor, the duration of its stay in said bay being indefinite, is not within the taxable jurisdiction of the Island of Porto Rico.

(6) That the Court erred in holding that the levy and collection of a tax upon the property described in the bill of complaint affects instrumentalities of the National Government; and, therefore, the Insular Government of Porto Rico had no power to levy and collect the same.

(7) That the Court erred in holding that the property of complainant can receive no protection of any kind or character in return for the taxes attempted to be levied and collected, because the property is wholly beyond the police jurisdiction of the Insular Government.

(8) That the Court erred in holding that the Insular Government has no jurisdiction over the harbor areas and navigable streams of Porto Rico in the sense of the power to tax property used exclusively in and about the execution of a Government contract, the duration of the stay of the said property in said waters being indefinite.

(9) The Court erred in holding that the levying and collection of the tax upon the property described in the bill of complaint is an interference with the commerce clause of the Constitution, and that it is a taking of property without due process of law.

(10) That the Court erred in entering a decree perpetually enjoining Samuel D. Gromer, Treasurer of Porto Rico, the defendant herein, and his successor in office as Treasurer of Porto Rico, from attempting, or, in fact, levying or collecting any taxes upon the property described in the bill of complaint, and taxing costs against defendant.

ARGUMENT.

The theory upon which appellee is proceeding to enjoin the Treasurer of Porto Rico from collecting the taxes upon the

property of appellee is that the Insular Government of Porto Rico has no jurisdiction or control of any kind whatsoever over the harbor areas and navigable waters of Porto Rico, nor over property located therein, because of Section 13 of the Act approved April 12, 1900, entitled "An Act Temporarily to Provide Revenues and a Civil Government for Porto Rico, and for Other Purposes," and commonly known as the "Foraker Act."

Appellee bases its right to institute a suit in equity against the Treasurer of Porto Rico on Section 12 of the Act of the Legislative Assembly of Porto Rico approved March 8, 1906, entitled "An Act to Define Injunctions and to Prescribe when they may be Issued, and to Repeal an Act Authorizing Injunctions approved March 1, 1902, and all Laws in Conflict Herewith," which Section reads as follows:

> SECTION 12. Any injunction may be issued to prevent the illegal levying of any tax, duty or toll, or for the illegal collection thereof, or against any proceeding to enforce such collection; and any number of persons whose property may be burdened by a tax so imposed, may join themselves to obtain such injunction. * * *

Appellant at the outset denies appellee's right to bring this suit in a court of equity, upon the ground that the local statute relied on by the appellee is wholly insufficient to give the District Court of the United States for Porto Rico jurisdiction of the cause, for two reasons: *First*, because the statute itself does not authorize a suit in equity by a single taxpayer on account of any irregularity or illegality in the tax; and, *Second*, because the equity jurisdiction of the District Court of the United States for Porto Rico can neither be enlarged nor diminished by an Act of the Legislative Assembly of Porto Rico.

The only construction which can be given to this Section of the Law of Injunction is that it authorizes the granting

of an injunction by an Insular Court in any case where the law under which the officials of the island are acting is for any reason void; that is, that an injunction is authorized only when the apparent authority of the Treasurer of Porto Rico for the levy of such tax is defective and void. The words in the statute "and any number of persons whose property may be burdened by a tax so imposed, may join themselves to obtain such injunction," refers and applies only to cases where a general levy or assessment of a tax is illegal or void, and not to cases in which a number of taxpayers, acting independently and alleging different and distinct grounds of irregularity or illegality, may join in one suit for an injunction.

In the case of *Pacific Express Company vs. Siebert,* reported in 142 U. S., at page 348, the Court, in considering the question of an injunction to restrain the assessment or collection of a State tax, said:

> The primary and fundamental ground on which the maintenance of such a suit rests is the unlawfulness of the tax against which relief is sought, or, in other words, the invalidity or the unconstitutionality of the legislative Act under the authority of which the tax is imposed. It is true that this ground is not in itself sufficient.

See also:

Shelton vs. *Platt,* 139 U. S., 591, 594;

Allen vs. *Pullman's Palace Car Company,* 139 U. S., 658, 661;

Taylor vs. *Louisville, etc., R. R.,* 88 Fed., 357, 358;

Wason vs. *Major,* 10 Col., App., 184, 50 Pac., 742.

But, in no event, can the Act of the Legislative Assembly of Porto Rico approved March 8, 1906, confer upon the District Court of the United States for Porto Rico jurisdiction in a case in which it did not already possess such juris-

diction under the Constitution and laws of the United States.

Section 914 of the Revised Statutes of the United States, relative to practice and proceedings in circuit and district courts, provides as follows:

> The practice, pleadings and forms and modes of proceeding in civil causes, *other than equity and admiralty causes,* in the circuit and district courts shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of Court to the contrary notwithstanding.

In construing the above statute the Supreme Court of the United States, in the case of *Perez* vs. *Hernandez,* appealed from the District Court of the United States for Porto Rico, said:

> We think it was the intention of Congress in the Porto Rican Act to require the District Court, exercising the jurisdiction of a circuit court, in analogy to the powers of the circuit courts in the States, to adapt themselves, *save in the excepted cases in equity and admiralty,* to the local procedure and practice in Porto Rico. This conclusion is in accord with the policy of the United States, evidenced in its legislation concerning the Island ceded by Spain, and secures to the people thereof a continuation of the laws and methods of practice and administration familiar to them, which are to be controlling until changed by law.
>
> *Perez* vs. *Hernandez,* 202 U. S., 97.

Mr. Justice Gray, in delivering the opinion of the Court in the case of *Watts* vs. *Camors,* reported in 115 U. S., page 362, said:

> If it is considered as a question of the remedy and

relief to be judicially administered, the equity and admiralty jurisdiction of the courts of the United States, under the national constitution and laws, is uniform throughout the Union, and cannot be limited in its extent, or controlled in its exercise, by the laws of the several States.

See also:
United States vs. *Howland*, 4 Wheat., 108;
Livingston vs. *Story*, 9 Pet., 632;
Russell vs. *Southard*, 12 How., 139; .. .. ..
Neves vs. *Scott*, 13 How., 268;
The Chusan, 2 Story, 455;
The St. Lawrence, 1 Black, 522;
The Lottawanna, 21 Wall., 558.

In Volume 1 of Street's Federal Equity Practice, edition of 1909, Section 22 et seq.. is found the following statement of the doctrine above urged:

The equity jurisdiction conferred on the Federal Courts by the laws of the United States is substantially the same in every part of the country. So far as these courts are concerned, one uniform system of equity prevails through all of the States. The extent of this jurisdiction is measured, broadly speaking, by the jurisdiction exercised by the High Court of Chancery of England at the time of the passage of the Judiciary Act of 1789.

This equity jurisdiction is subject to neither limitation nor restraint by State legislation, and the Federal Courts of equity are not bound by State laws in regard to this matter. State statutes creating new remedies in State courts are not effective to impair or lessen the equity jurisdiction of the Federal courts. (*Fraser* vs. *Colorado Dressing Co.*, etc., 5 Fed., 163; *Cropper* vs. *Coburn*, 2 Curtis, 465; *Byrd* vs. *Badger* (1858, McAllister, 443). These courts exercise the same jurisdiction and powers in States like Louisiana and Pennsylvania, where no district court of equity has ever existed, as

they do in other States where chancery courts, or courts of equity, have always existed. A State statute giving equitable jurisdiction to a State court of equity over a controversy that is not within the ancient and proper jurisdiction of the court of equity cannot be given effect in a Federal court of equity; and, similarly, a State statute giving a court of law power to entertain and determine equitable matters is of no moment in a Federal court. (*Moore* vs. *Robbins*, 96 U. S., 530, 24 L. Ed., 848; *Foster* vs. *Mora*, 98 U. S., 428, 25 L. Ed., 192; *Gibson* vs. *Choutau*, 13 Wall., 102, 20 L. Ed., 537; *Johnson* vs. *Towsley*, 13 Wall., 73, 20 L. Ed., 485; *Tegarden* vs. *LeMarchel*, 129 Fed., 487).

Whenever a new right is granted by statute, or a new remedy for a violation of an old right, or whenever such rights and remedies are dependent on State statutes or Acts of Congress, the jurisdiction of such cases, as between the law side and the equity side of the Federal Court, must be determined by the essential character of the case; and unless it comes within some of the recognized heads of equitable jurisdiction, it must be held to belong to the other. (Van Norden *vs.* Morton, 99 U. S., 378, 380, 25 L. Ed., 453,454).

The rule embodied in the illustrations given in this section must be taken subject to the proviso that the controversy to which the suit relates is one where the court of equity alone can give adequate and full relief. (Frost *vs.* Stipley, 121 U. S., 552, 557, 30 L. Ed., 1010, 1012). Furthermore, if the statutory remedy in any way conflicts with any right protected by the laws of the United States, or if it conflicts with the general principles underlying the application of equitable doctrines as worked out by the Federal courts, such statutory remedy will not be enforced; and the principle in question will not be so applied as to justify the Federal courts in entertaining a suit in any case where the plaintiff appears to have a plain adequate and complete remedy at law. (*Cates* vs. *Allen*, 149 U. S., 451, 37 L. Ed., 804; *Whitehead* vs. *Shattuck*, 138 U. S., 147, 34 L. Ed., 873; *Scott* vs. *Wright*, 75 Fed., 742, 23 C. C. A., 498).

We respectfully urge that the case at bar is not one of those which may properly come within the exceptions above mentioned, for the reason that it does not come under any one of the well recognized grounds of equity jurisdiction, and no ground of equity jurisdiction is set forth or alleged in the bill of complaint, and we insist that the local statute of itself alone is insufficient to give the District Court of the United States for Porto Rico jurisdiction of a case which has no other claim than the statute to a standing in the District Court of the United States for Porto Rico, and we believe that the bill should be dismissed on the ground that appellee has an adequate remedy at law.

The bill of complaint alleges that the enforcement and collection of said tax will be "to the great injury and loss of your orator." It further alleges that appellee is entirely without any remedy at law in connection with the foregoing matters and things, and that it is compelled to resort to a court of equity for the protection of its interests, to the end that it may have that relief to which it is entitled and which can only be granted in a court of equity.

These are mere conclusions, and are not such statements of fact as entitle the appellee to relief in a court of equity.

> *High on Injunctions,* Sec. 34, and cases cited.
> *City of Highlands* vs. *Johnson,* 24 Colo., 371, 51 Pac., 1,004;
> *People* vs. *The District,* 68 Pac., 247;
> *Dows* vs. *City of Chicago,* 11 Wall., 108.

In the case of *Arkansas Building & Loan Association* vs. *Madden,* reported in 175 U. S., 269, the Court held:

> That the collection of taxes under the authority of the State may not be enjoined by a court of the United States on the sole ground that the tax is illegal, but it must appear that the party taxed has no adequate remedy by the ordinary process of law and that there

> are some special circumstances bringing the case within some recognized head of equity jurisdiction.

With regard to appellee's remedy at law, we respectfully invite the Court's attention to Sections 308 and 309 of the Political Code of Porto Rico, as amended by the Act of March 10, 1904, and Section 310 of the same Code, which provide for the creation of a permanent Board of Review and Equalization "for the purpose of passing upon all claims made by tax-payers in respect to the assessment of their property." Tax-payers are given the right of appeal from the action of the assessors, and the Board of Review is authorized to "hear the appeal and determine anew any questions arising before the Board which relate to the liability of the property to assessment, or to the amount thereof," and said Board is given power "to abate, lessen or increase the valuations made in any schedule returned to it, whether any complaint has been made in relation thereto or not, and to decide all other complaints in respect to the assessment of taxes, and to correct all errors as they may be brought to its attention."

The appellee, therefore, has a remedy at law. It could have appealed to the Board of Review and Equalization, where the question of its liability to taxation could hav been fully discussed and decided. It could also have paid the tax assessed against it and brought suit to recover under the doctrine announced in *Arkansas Building and Loan Association* vs. *Madden,* Supra, in which Mr. Chief Justice Fuller said:

> We assume that the payment would, under the circumstances detailed, be compulsory and not voluntary, and no reason is perceived why the rule permitting recovery back would not apply.
>
> See also:
>
> *Dows* vs. *Chicago,* 11 Wall., 108.

No irreparable injury would have followed appellee from the enforcement and collection of said tax. It had an adequate and ample remedy in the event said tax was illegal and wrongfully collected, and we believe that Section 723 of the Revised Statutes, which declares "that suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law," is conclusive of the case at bar, and the interference of a court of equity can only be justified upon appellee's showing that the case comes within some of the recognized heads of equity jurisdiction, not remediable at law.

4 Fed. Stat. Ann., 530, and cases cited.

We respectfully urge that the fact that appellee is engaged in the prosecution of a work under a contract with the United States Government has no bearing whatever on the right of the Insular Government to levy a tax on its property. Being engaged in such work does not make appellee a Federal agency in the sense that a taxation of its property would be an interference with the instrumentalities and operations of the Federal Government.

The doctrine of taxation of instrumentalities and agencies of the Federal Government has been clearly and succinctly stated in the case of *Railroad Company* vs. *Peniston,* 18 Wallace, 36, as follows:

> It is, therefore, manifest that exemption of Federal agencies from State taxation is dependent, not upon the nature of the agents, or upon the mode of their constitution, or upon the fact that they are agents, but upon the effect of the tax; that is, upon the question whether the tax does in truth deprive them of power to serve the Government as they were intended to serve it, or does hinder the efficient exercise of their power. A tax upon their property has no such necessary effect.

> It leaves them free to discharge the duties they have undertaken to perform. A tax upon their operations is a direct obstruction to the exercise of Federal powers.

The tax levied by the Treasurer of Porto Rico is not a tax upon the operations of appellee, nor does it deprive it of the power to serve the Government, nor hinder the carrying out of its said contract, but is simply a tax upon its property, and, within the doctrine just enunciated, the property is not exempt from taxation by a State or Territory as being a tax upon instrumentalities of the National Government.

See also:
Western Union Tel. Co. vs. *City of Richmond,* 26 Grat., 1.
Judson on Taxation, Secs. 1 to 38, inclusive.

In 1900, the Congress of the United States passed an Organic Act for Porto Rico entitled "An Act Temporarily to Provide Revenues and a Civil Government for Porto Rico, and for Other Purposes," and in Section 1 of said Act provided, as follows:

> That the provisions of this Act shall apply to the Island of Porto Rico and to the adjacent islands and waters of the islands lying east of the seventy-fourth meridian of longitude west of Greenwich. * * *

In this section is found the only reference in the Organic Act of Porto Rico to the territorial extent of the Government created by said Act, except where it is stated in the latter part of the same section that the name "Porto Rico, as used in this Act, shall be held to include not only the Island of that name, but all the adjacent islands as aforesaid," and we submit that this section limits and defines, without exception or reservation, the territorial extent of

the governmental powers conferred upon the body politic known as "The People of Porto Rico;" and that that power may be exercised untrammelled within that limit, subject only to the general reservation that all laws passed by the Legislature of Porto Rico shall not be in conflict with the laws of the United States. This Act of Congress, or, as it is generally known, the "Foraker Act," contains provisions establishing a complete system of government for Porto Rico, and provides for a legislative assembly whose authority shall extend to all matters of a legislative character not locally inapplicable. And in the latter part of Section 31 of said Act it is provided that all laws enacted by the Legislative Assembly shall be reported to the Congress of the United States, which reserves the power and authority, if deemed advisable, to annul the same. Nowhere in the Act in question, nor in the Joint Resolution of May 1, 1900, nor in the amendment to said Act approved March 2, 1901, nor the Act of July 1, 1902, and the executive orders issued in pursuance thereof, is any limitation found curtailing or limiting the territorial extent of the jurisdiction of the Insular Government as fixed by Section 1 of the Organic Act.

Section 13 of said Act, upon which appellee bases its contention that The People of Porto Rico have no jurisdiction or control whatsoever over harbor areas and navigable waters of Porto Rico, or over property located therein, is, as follows:

> That all property which may have been acquired in Porto Rico by the United States under the cession of Spain in said Treaty of Peace in any public bridges, road-houses, water-powers, highways, unnavigable streams, and the beds thereof, subterranean waters, mines, or minerals under the surface of private lands, and all property which at the time of the cession belonged, under the laws of Spain then in force, to the various harbor-works boards of Porto Rico, and all

> harbor shores, docks, slips, and reclaimed lands, but not including harbor-areas or navigable waters, is hereby placed under the control of the government established by this Act, to be administered for the benefit of The People of Porto Rico; and the legislative assembly hereby created shall have authority, subject to the limitations imposed upon all its acts to legislate with respect to all such matters as it may deem advisable.

The intent and meaning of the foregoing section was solely to place under the control of the Insular Government certain properties and property-rights, and is more in the nature of a deed of conveyance than anything else, and cannot be construed to be a restriction or limitation on the territorial jurisdiction of the Insular Government. In other words, it simply grants and reserves property, and does not confer governmental jurisdiction. It deals with property belonging to the government; but does not grant the power to exercise the functions of government. The fact that "harbor areas and navigable waters" are excluded from the grant of property to The People of Porto Rico does not affirmatively or inferentially imply that such harbor areas and navigable waters are excluded from the jurisdiction of that government, but, on the contrary, we submit that the intention of Congress was only to retain in the United States the title or property right to such harbor areas and navigable waters, for the purpose of exercising the usual national control and jurisdiction over commerce and navigation. There was no reservation whatever as to sovereignty or governmental powers or jurisdiction. The United States therefore retained, after the passage of the Foraker Act, only the rights of an ordinary proprietor. In case harbor areas and navigable waters had not been reserved to the United States in Section 13 of the Organic Act, it would have been imperative for the Federal Government, in order to control navigation and commerce in Porto Rico, to have

obtained from the Porto Rican Government a cession thereof in the same manner as was found necessary in order to control certain lands for the naval station in the Island of Culebra (23 Opinions of the Attorney-General, 564); but Congress, in order to obviate the necessity of so doing, reserved the harbor areas and navigable waters from the conveyance of property to The People of Porto Rico for the purpose of controlling the right of navigation over said waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which is vested in the general government by the Constitution.

In the opinion of the Attorney-General of Porto Rico, reported in Volume 1, page 44, Opinions of the Attorney-General of Porto Rico, cited with approval by the District Court of the United States for Porto Rico in the case of *Valdez* vs. *Grahame*, 3 Porto Rico Federal Reports, 417, the Attorney-General held that until Congress legislated upon the matter of harbor rules and regulations for the harbors of Porto Rico, the Insular Government has ample authority to prescribe such rules and regulations.

The Attorney-General of the United States, in denying the authority of the President arbitrarily to declare the Island of Culebra a naval reservation (Vol. 23, Opinions of the Attorney-General, 566), advised the Secretary of the Navy that:

> The obvious implicaion of Sections 12 and 13 of the Porto Rican Act is that the General Government retains title to, possession of, and control over certain other public property, of which fortifications and their appurtenances are specified, and also reserves for its own administration *the usual national powers* over lights, buoys and other matters affecting navigation or "works undertaken by the United States."

On June 14, 1906, the Acting Judge-Advocate-General of the Army rendered a very carefully considered opinion to the Honorable, the Secretary of War, holding that under the law, jurisdiction over ordinary crimes committed upon reservations in Porto Rico, not involving offenses against the Federal Government, had passed to the Insular Government by the Act of April 12, 1900, and recommended that Congress be asked for additional legislation, reclaiming this jurisdiction and vesting the same in the District Court of the United States for Porto Rico. In the course of the opinion the Judge-Advocate said:

> The Attorney-General rests his argument that such jurisdiction vests in the local Insular courts on the ground that the provisions of the Foraker Act establishing government in Porto Rico apply by the express terms of the Act to the entire Island and the adjacent islands within the limits specified in said Act, without any exception or reservation, and that, therefore, the governmental power conferred upon the body politic known as "The People of Porto Rico" may properly be exercised everywhere within said limits, subject only to the laws of the United States; and that this grant of governmental authority and the field of its exercise are not in any way limited by the subsequent Act of July 1, 1902, authorizing the President to reserve lands needed for military and other public purposes, nor by the executive orders issued in pursuance of this Act setting aside certain portions of the public domain for use as such reservations.
>
> In the substantially analogous case where military reservations are established within a State by Executive Order, either before or after the admission of the State into the Union, it has been repeatedly held, and is now the established doctrine, that the legislative power of the State will be as full and complete over such reservations as over any other place within her limits, except that the Federal instrumentalities are exempt from State control; that is, that the ordinary municipal laws

of the State continue in force on these reservations, unless inconsistent with the laws of the United States (*Fort Leavenworth R. R. Co.* vs. *Lowe,* 114 U. S., 525; *Chicago, Rock Island & Pacific R. R. Co.* vs. *McGlinn,* id., 542, and cases cited; VII Opinions of Attorney-General, 571).

It has been similarly held as to such military reservations within territories that the Executive action which is involved in their establishment is restricted to the withdrawing of the lands from sale and that no other incidents of any character whatever attend such withdrawal. The act of the President has no effect upon the operation of Territorial laws, which continue in force in and upon the reserve tracts to precisely the same extent as if no reservation had been made, unless their operation is modified by Congress (Opinions, Judge-Advocates-General, September 10, 1902).

The Foraker Act establishing civil government in Porto Rico closely resembles in its main features the organic acts which Congress has passed from time to time for the creation of territorial governments within the continental limits of the United States. In some respects the grant of governmental power to Porto Rico is even greater than in the case of the Territories more nearly resembling the autonomous government of the States of the Union. Section 1 of the Act provided that its several provisions "shall apply to the Island of Porto Rico and to the adjacent islands and waters of the islands lying east of the seventy-fourth meridian of longitude west of Greenwich, which were ceded to the United States by the Government of Spain by treaty entered into on the 10th day of December, 1898," thus fixing, I think, in a general way, the territorial jurisdiction of the several departments of government it created, including the courts, as coextensive with the limits here specified. As we have seen, neither the Foraker Act nor the subsequent Act of July 1, 1902, authorizing the President to reserve public lands in Porto Rico for military and other purposes, contained any provision excepting the lands so reserved from the jurisdiction of the local government, and it is certain

> that the action of the President in declaring these reservations could not have had that effect. The reasoning which the courts and Attorney-General apply to sustain their conclusion that the laws of States and Territories are operative over reservations where jurisdiction has not been reserved by Congress or subsequently ceded by the State would seem to apply with equal force to sustain the proposition that the laws of Porto Rico and the jurisdiction of its courts similarly extend over military reservations in that island. It follows, therefore, I think, that the contention of the Governor of Porto Rico must be sustained insofar as to recognize that the local laws and the jurisdiction of the local courts extend over the reservations of Porto Rico, except insofar as their operation there may have been restricted by Acts of Congress, and saving always that the instrumentalities of the Federal Government located thereon are, of course, not subject to the local jurisdiction.

This opinion of the Judge-Advocate-General of the Army was reviewed by Secretary of War Taft, who said:

> I concur in the opinion of the Judge-Advocate-General insofar as it is held "that the laws and ordinances of Porto Rico, when not in conflict with the laws of the United States not locally inapplicable, extend and are in force in and over all lands reserved by the United States for military and other public purposes, saving always that instrumentalities of the Federal Government located therein are exempt from local control." This includes, of course, the criminal laws of the Island of Porto Rico, but whether or not the enforcement of these latter within and upon such reservations is left wholly to the Insular courts is, I think, open to some doubt.

The Attorney-General of the United States, in an opinion addressed to the Secretary of the Navy (Vol. 26, Opinions of the Attorney-General, 91), in considering the power of

taxation under Section 12 of the Act of July 1, 1902, 32 Stat., 691, 695, which reserved to the United States in the Philippine Islands "such land or other property as shall be designated by the President of the United States for military and other reservations," held that that Section of the Act did not confer upon the President the power to withdraw the reservations completely from the local jurisdiction and place it under the jurisdiction of the Navy Department, thereby erecting a new and independent authority for all purposes of civil government; that the Section in question simply, grants and reserves property, but does not confer governmental jurisdiction, and that the jurisdiction of the Navy Department over reservations was not of such character and extent as to exclude the civil powers of the Philippine Government relating to the imposition of taxes thereon, etc.

Referring again to the language of the Organic Act of Porto Rico, let us assume for a moment, for the sake of argument, that Section 13 of said Act did not exist. What then can be said of the territorial extent of the jurisdiction of the Insular Government? It certainly cannot be claimed that The People of Porto Rico would not have jurisdiction over the harbors of the Island. Without Section 13 of the Act, what limitation is there in any other section, or in any other law, that denies to the Insular Government the same jurisdiction over crimes committed within the harbor areas that it has over crimes committed on the property of a private citizen located within the Island? Jurisdiction over the Island of Porto Rico and the adjacent islands, and *the waters of the islands,* is plainly given to the Insular Government by the introductory section of the Organic Act, and unless that jurisdiction is restricted or limited in some other section of the Act it remains vested in The People of Porto Rico. Section 13 contains the only language in said Act which appellee alleges withdraws the jurisdiction of the

Insular Government from harbor areas and navigable waters, but we submit that this section in no way whatever changes or affects the jurisdictional status of the Insular Government over such harbor areas and navigable waters. Congress merely said that certain property rights are ceded to the Insular Government, to be administered for the benefit of The People of Porto Rico, and that certain other property rights are not so ceded. Harbor areas and navigable waters are merely excluded from the grant of property rights to the Insular Government, but what the status of these harbor areas and navigable waters is cannot by any possible means be determined by a reading of Section 13 of the Organic Act. It is apparent on the face of that section that it does not in any way fix the status or change the status which harbor areas and navigable waters already had. It leaves the harbor areas and navigable waters in exactly the same condition in every respect as fixed by Section 1 of the Organic Act. We do not refer to the Act of July 1, 1902, because, in our opinion, it does not alter the view here taken with regard to the jurisdiction of the Insular Government over the harbors.

The United States were both proprietors and sovereigns of the public lands and navigable waters in Porto Rico until the passage of the Act of April 12, 1900, establishing a civil government for Porto Rico. By the Act establishing civil government for Porto Rico, reserving only their proprietary rights over harbor areas and navigable streams, the United States relinquished to The People of Porto Rico their governmental or local sovereign right and jurisdiction, and were thenceforth only proprietors in the sense that any natural person owning land is a proprietor. Having so relinquished their sovereign rights, that condition remains today unless The People of Porto Rico has in some way either directly or by implication receded to the United States that jurisdiction, or the Congress of the United States has

passed some Act revoking the grant of jurisdiction as contained in the Organic Act. While it is true that the Legislative Assembly of Porto Rico, in an Act approved February 16, 1903, conferred upon the United States exclusive jurisdiction in all lands that may hereafter be acquired by it in the Island of Porto Rico, by purchase or condemnation, nevertheless, up to the present time, it has never ceded to the United States exclusive jurisdiction over harbor areas and navigable streams.

If Section 13 of the Organic Act was a retention of exclusive jurisdiction to the United States Government, why then should it become necessary for the Legislative Assembly of Porto Rico to cede such jurisdiction over lands acquired by the United States in the Island of Porto Rico?

In *Shively* vs. *Bowlby*, 152 U. S., 30, Mr. Justice Gray, among other things, said:

> In the very recent case of *Knight* vs. *U. S. Land Association*, Mr. Justice Lamar, in delivering judgment, said: "It is the settled rule of law in this Court that absolute property in and dominion and sovereignty over the soils under the tide-waters in the original States were reserved to the several States, and that the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf, as the original States possessed in their respective borders. Upon the acquisition of the territory from Mexico the United States acquired the title to the tide-lands equally with the title to up-lands, but with respect to the former they held it only in trust for the future States that might be erected out of such territory." 142 U. S., 183.

And at page 49, he said:

> And the territories acquired by Congress, whether by deed of concession from the original States or by treaty with a foreign country, are held with the object that as soon as their population and condition justify it, of

> being admitted into the Union as States upon an equal footing with the original States in all respects and the title and dominion of the tide-waters and the lands under them are held by the United States for the benefit of the whole people, and, as this Court has often said in cases above cited, "in trust for the future States."

That Congress intended to retain only the title to the harbor areas and navigable waters, and to exercise only the usual national control over the same, is evidenced by the fact that during more than ten years that have elapsed since the institution of civil government in Porto Rico it has not in fact exercised any other jurisdiction or control, and has not in any way indicated an intention to exercise any other jurisdiction or control, and has not in any way denied to the Insular Government the exercise of the jurisdiction and control which that Government has, and does claim, and is exercising over harbor areas and navigable waters, by and through laws passed by the Legislative Assembly of Porto Rico, and which laws have been duly and regularly reported to the Congress of the United States, in accordance with the provisions of Section 31 of the Foraker Act.

As parallel cases to the one at bar, and in support of the contention of the appellant, as to the legality of the assessment and levying of said taxes, we respectfully call attention to the following well known and well reasoned cases:

In the National Dredging Company *vs.* State, decided by the Supreme Court of Alabama (12 So. Rep., 720), it was held that the State had a right to tax the property of the Dredging Company under circumstances practically identical with those of the case at bar. The National Dredging Company was a Delaware corporation, and under a contract with the Government of the United States it brought certain property, such as tug-boats, scows, etc., to Mobile Bay and employed them in the work of dredging the harbor. Not only are the facts in that case practically identical with the

case at bar, but some of the property is in fact the same identical property. The Court held that the property was subject to taxation in the State of Alabama.

In Northwestern Lumber Company *vs.* Chehalis County, decided by the Supreme Court of Washington, April 29, 1901, (54 L. R. A., 212), the above case of the National Dredging Company *vs.* Alabama was reviewed and approved. The Supreme Court of Washington held that ocean-going tug-boats are not exempt from taxation by the State in whose waters they are exclusively employed, by the fact that they are registered and taxed at a port in another State where the owner is domiciled.

In Farnham on Waters and Water-Rights, Vol. 1, pp. 82 and 83, we find the following statement:

> Statutes providing for the punishment of crimes on the high-seas do not apply to crimes committed within the harbor so as to be within a county (*U. S.* vs. *Grush*, 5 Mason, 290, Fed. Cas. No. 15268) and the State courts have jurisdiction therein (*Commonwealth* vs. *Peters*, 12 Met., 387). Although Congress has vested jurisdiction over certain crimes in the Federal Court, if they are also crimes at common-law, or defined by State statutes, the State courts will have jurisdiction over them, unless they are prohibited by Congress from exercising it. (*People* vs. *Welch*, 24 L. R. A., 117). A territory is not within the meaning of an Act of Congress giving Federal Court jurisdiction of crimes committed without the jurisdiction of any particular State, so that the Federal courts will have jurisdiction of a crime committed within a tidal harbor within the limits of the territory. (Smith *vs.* U. S., 1 Wash. Ter., 262).

In the old and well known case of the United States *vs.* Bevans, 3rd Wheat., 336, the Supreme Court of the United States held that a homicide committed by a marine on board a United States ship of war, lying in the main-channel of Boston Harbor, was cognizable in the courts of the State and

not within the jurisdiction of the courts of the United States.

The Court in *United States* vs *Bateman*, 34 Fed. Rep., 86, in following the doctrine enunciated in the case of *Railroad Company* vs. *Lowe*, Supra, held that a homicide committed within the Presidio military reservation is not an offense over which the courts of the United States have jurisdiction.

The Circuit Court of the Southern District of New York, in the case of the *United States* vs. *Davis*, et al., Fed Cas. No. 14931, charged the jury, as follows:

> (1) That it must be proved to their satisfaction that a larceny had been committed, and if they believed the testimony in this cause there could be no doubt on this point. (2) That it must be committed on the high seas, and on board of an American vessel; and it was a question of fact for them to determine from the evidence whether the property stolen had been taken while the vessel lay at the Port of Savannah or upon the high seas. If they found that the goods were stolen while the vessel was on the high seas, they would be bound to convict the prisoner, but if the goods were taken while the vessel lay at the Port of Savannah, in the State of Georgia, although the prisoner was morally guilty of the larceny, he could not be punished by this court under the Act of Congress, as the statute had not conferred jurisdiction on this court and the jury would be bound under the latter hypothesis to acquit the prisoner.

Section 32 of the Foraker Act provides: "That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable * * * not inconsistent with the provisions hereof."

We respectfully urge that until the Congress of the United States has acted in the premises the Legislative Assembly of Porto Rico is empowered and has full authority, by virtue

of the foregoing Section, to legislate in reference to all matters pertaining to the harbors of Porto Rico.

A territorial statute is operative upon a military reservation within the Territory so long as it does not conflict with the laws of the United States or with the military administration and legitimate operations of the Government.

> *Reynolds* vs. *People*, 1 Colo., 181;
> *Territory* vs. *Burgess*, 8 Mont., 57;
> *Scott* vs. *U. S.*, I Wyo., 40.

In Federal Case No. 10702 (The Panama), the District Court of the United States for the District of Oregon held that pilotage, being a rightful subject of legislation, the Territory of Washington had power to pass pilot laws. In that case Judge Deady, among other things, said:

> The Act of Congress authorizing the Government for the Territory of Washington declares that the "legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States." A rightful subject of legislation is a subject, which from the nature of things, the course of experience, the practice and genius of our government, properly belongs to the legislation to regulate and control rather than the judicial or executive departments of the government. Pilots and pilotage are as much the proper subjects of legislation as any subject ever regulated by the law of a Territory, and have been so from their earliest history. Congress has power to legislate on this subject in the Territories. Being "a rightful subject of legislation," in this case Congress has given this power to the Territorial legislation. Neither was the Act of 1789 a grant of power from Congress to the States to legislate on the subject of pilots and pilotage. The power is concurrent in the State and National Government until exercised by the latter, when so far as exercised it becomes exclusive. If the power was exclusively in the National Govern-

ment, Congress could not grant it to the States, and being concurrent it could not nor need not. This view is in substantial accordance with the doctrine of Cooley *vs.* Board of Wardens, 12 How. (53 U. S.), 316, that the Act of 1789 is a mere legislative recognition of the concurrent power of the States over this subject, so long as Congress does not act in the matter.

The right of a State or Territory to tax private property on reservations has been affirmed in numerous cases.

In the case of *Thomas* vs. *Gray*, 169 U. S., 275, the Supreme Court, speaking through Mr. Justice Shiras, said:

> The Organic Act, as we have already seen, extends the exterior boundary of the Territory around these Indian reservations. It also provided for the division of the Territory into council and representative districts, and for the election of a legislative assembly and of a delegate to Congress. The Indian reservations were not included within any of the council or representative districts. The Act provided that there should be seven counties, and fixed the county seats, and under the authority of the Act the Governor established the boundaries of these counties. The legislature was authorized to change the boundaries of the original counties, but was not given authority to include these Indian reservations, or any lands not then open to settlement in any of the counties. * * * Under this condition of affairs it is contended that the taxing power cannot be lawfully exerted as respects property within these reservations. It is said that those to be affected by the tax have no voice in the election of the legislature to make the laws by which they are to be governed; that they have no school facilities for their children; that that cannot organize towns, so as to have the benefit of the police and sanitary laws of the Territory; that the officers of Kay County have no authority to expend any portion of the moneys raised by this taxation in improving roads within the Indian reservation; that they cannot participate in the election of the Territorial dele-

> gate; and that they are not benefited by the taxes propagated for salary fund, contingent expense fund, sinking fund, road and bridge fund, poor fund, etc.
>
> Undoubtedly there are general principles, familiar to our systems of State and Federal Government, that the people who pay taxes imposed by laws are entitled to have a voice in the election of those who pass the laws, and that taxes must be assessed and collected for public purposes, and that the duty or obligation to pay taxes by the individual is founded in his participation in the benefits arising from their expenditure. But these principles, as practically administered, do not mean that no person, man, woman or child, resident or non-resident, shall be taxed, unless he was represented by some one for whom he had actually voted, nor do they mean that no man's property can be taxed unless some benefit to him personally can be pointed out. Thus it has been held that personal allegiance has no necessary connection with the right of taxation; an alien may be taxed as well as a citizen. *Mager* vs. *Grima*, 8 How., 490; *Witherspoon* vs. *Duncan*, 4 Wall., 210. So, likewise, it is settled law that the property, both real and personal, of non-residents may be lawfully subjected to the tax-laws of the State in which they are situated.

The above case of *Thomas* vs. *Gray* was cited with approval in *Wagner* vs. *Evans*, 170 U. S., 588, and in that case the Court said:

> Nor are taxes, otherwise lawful, invalidated by the allegation or even the fact that the resulting benefits are unequally shared.

In conclusion, we respectfully submit that appellee is not entitled to the relief sought in the District Court of the United States for Porto Rico: (1) because the bill of complaint does not show facts sufficient to give that Court jurisdiction; (2) that the bill does not show any ground upon which appellee can have any standing in a court of equity.

If complainant has made out a case in equity, then the local statute would be applicable, and might be available as one of the remedies by which relief could be granted, but the local statute is wholly insufficient in itself to entitle appellee to bring this suit in a Federal Court of Equity.

The foregoing reasons are respectfully urged as sufficient for the reversal of the decree of the District Court of the United States for Porto Rico, and for the dismissal of the bill in this case. The question of Insular control or jurisdiction over the harbors is one going to the merits of the case, and is not essential to a decision on appellant's demurrer. But if the Court deems it proper to pass on this question alone, then we respectfully urge that the Organic Act of Porto Rico does give the Insular Government jurisdiction over harbor areas and navigable waters of the Island; and even if Congress should in the future enact harbor rules and regulations, and assume entire police and sanitary control over the Porto Rican waters, appellee's bill should still be dismissed for the reason that at the present moment and during all of the period covered by the tax sought to be enjoined The People of Porto Rico is, and has been, exercising police control and jurisdiction over such waters, and does extend the same protection over appellee as it does over any other taxpayer.

Respectfully submitted,

FOSTER V. BROWN,
Attorney-General of Porto Rico.

PAUL CHARLTON,
of Counsel.

Attorney for Appellant.

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In the Supreme Court of the United States

OCTOBER TERM, 1910.

SAMUEL D. GROMER TREASURER OF PORTO RICO.
APPELLANT.
vs
THE STANDARD DREDGING COMPANY.
APPELLEE.

No. 174

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF AND ARGUMENT OF APPELLEE.

CHARLES HARTZELL.
MANUEL RODRIGUEZ SERRA.
Solicitors for Appellee.
San Juan Porto Rico.

In The Supreme Court of the United States

OCTOBER TERM, 1910.

SAMUEL D. GROMER, Treasurer of Porto Rico, Appellant vs The Standard Dredging Company, Appellee.	No 387.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

Brief and argument of Appellees.

The appeal in the above entitled cause has been brought to this court by the Insular Government of Porto Rico, seeking to reverse the action of the United States District Court for Porto Rico. in enjoining the collection of certain taxes. which it is claimed by appellee were illegally levied by the Treasurer of Porto Rico upon certain property of the appellee's company, which company has been engaged in the operation of dredging certain portions of the harbor area of San Juan, under á contract with the Government of the United States; and the said District Court of the United States for Porto Rico, upon consideration of the matters presented, determined that the property so sought to be subjected to taxation by the Insular Government of Porto Rico was so situated as that it was not subject to the jurisdiction of the Insular authorities, and from its character and use could not receive any benefit or protection as the result of such taxation, and that, therefore, the attempted levy and collection of the tax was illegal, and was prohibited by the injunctive order of that court. The tax in question was the ordinary Insular tax levied under the laws of Porto Rico and collected anually by the Treasurer, and the contention of appellee, briefly stated, is a follows:

The Government of the United States being the owner by express reservation under the acts of Congress relating to Porto Rico, of the harbor areas and submerged lands underlying the same entered into a contract with the complainant company by the terms of which the said company undertook to dredge and deepen the channel and certain parts of the harbor area at San Juan; that the said work was to be done for and on behalf of the Federal Government, and to be paid for out of national funds appropriated by the act of Congress, and was in no wise to be a charge against or upon any of the revenues of the Island or of the People of Porto Rico; that in pursuance of said contract the said complainant company caused to be brought to the point where said work was to be conducted, certain boats consisting of one dredge, one tug and several scows, and that said boats have been engaged within the said harbor area of San Juan harbor in dredging the submerged lands underlying the same, dumping the earth so removed in said operations into the sea out side of the said harbor; that the said contracts and the operations of the complainant company thereunder have had no connection with any Insular property or business; that the said complainant company has done no business with the Insular Government or the People of Porto Rico, nor has it conducted any business operations in or about the Island other than the performance of its said contract with the Government of the United States, and confining its operations exclusively to said harbor area, and in no wise connected with the use of any part or portion of the shore lines or lands of the said Island, or of the Insular Government.

The contention of apeellee briefly stated is, that under the circumstances related, in view of the status of the title to the harbor area and submerged lands underlying the same, that this property was used in the performance of the said contract is not subject to taxation for Insular purposes, that it is outside of the jurisdiction of the Insular

Goverment, and from its peculiar location would be incapable of receiving any benefit whatever as the result of such taxation, and that therefore the attempt to tax the same was illegal and a proper subject for the injunctive order of a court of equity.

In the able brief filed and prepared by the Attorney General of Porto Rico, in support of the contention of complainant, it is contended at great length that the District Court of the United States for Porto Rico, sitting as a court of equity, was without jurisdiction to entertain or pass upon the contention of appellee or the merits of the controversy presented thereby.

Whe shall not undertake to follow or discuss in detail the various propositions contended for appellee in this behalf, because we are confident that the right to institute and maintain this action is a substantial right which is granted expressly by section 12 of Injunction Law approved March 8, 1906, which reads as follows:

«An injunction may be granted to enjoin the illegal "levy of any tax, charge or assessment, or the collection "of any illegal tax, charge or assessment, or any proceding "to enforce the same, and any number of persons whose "property is affected by a tax or assessment so levied, may "unite in the petition filed to obtain such injunction.»

It is conceded as we understand by complainant's brief that if this suit was instituted in the Insular court that such court would undoubtedly have jurisdiction, provided it were justified by the facts in sustaining the action, but the contention is made that the Federal Court being bound by certain fixed rules and procedure in equity matters is without jurisdiction to grant the relief under the terms of the local statute which we have quoted.

In view of the various decisions which have been announced by this Honorable Court, with particular reference to the legal status of affairs in Porto Rico, and which decisions have insistently declared the doctrine that the local statutes of Porto Rico shall be applied and enforced where

the same are not expressly incompatible, it would not seem that there should be necessity for any lengthy argument on this branch of the case. Our contention is in this matter that the right which we are here claiming is in no sense a matter of remedy or of procedure, but that it is an express substantive right ceded to all persons by the laws of Porto Rico, and that any court having equitable jurisdiction within the Island, not only has jurisdiction to entertain such action, but that its action in the premises must be controlled by the terms and provisions of the local statute.

There is nothing in the statute in question referring to the matter of procedure, but it is the simple declaration of the grant of the right to any person aggrieved te secure a certain remedy, and the general equitable practice as established by law in the courts the United States is in no wise either abridged or enlarged by the statute in question, nor is it in any wise affected or altered, but on the other hand it is the simple declaration of the right of a person under certain circumstances to resort to a court of equitable jurisdiction to secure the declaration of the right so granted.

In this case we go further and contend that the same could be maintained in the District Court of the United States for Porto Rico entirely irrespective of the local statute, should it be deemed that the local statute was not applicable to thé particular facts stated in the original bill of complaint: and while we recognize to the fullest extent the general doctrine that courts of equity are slow to interfere by injunction against the collection of taxes, because of illegality in the tax, still there are certain well recognized exceptions to this rule, and within those exceptions it would seem that the case in question clearly falls under the facts alleged.

The doctrine in question is well stated at section 530 of Mr, High's work on injuntions, 3 rd edition, where it is said:

" An important exception to the general doctrine of " non interference by injuntion against the collection of reve- " nue, because of illegality in the tax, is recognized in that " class of cases where the relief is sought against a tax " assessed upon property which has been exempted by law " from taxation."

"Indeed, the exception has been so uniformally recog- " nized as to become of itself a governing rule in the " class of cases now under consideration, and it may be " laid down as the established doctrine of the courts that " the attempted enforcement of taxes upon property which " has been exempted by proper legislative authority from " the burdens of taxation, constitutes a grievance of so " irreparable a nature as to merit preventive relief by " injunction."

And at section 532 the author says:

" It is also an established rule, that where lands have " been set apart by the general government for the use of " Indian Tribes and have been exempted from taxes until " they shall be sold and patented to purchasers, the en- " forcement of a tax upon such lands, while thus exempted " from taxation may be enjoined. Where lands have been " granted by the United States in the construction of a " railway, but the legal title has not yet passed from the " Governement and the lands are not therefore subject to " taxation by the state in which they are located, the " United States still having an interest in them, which " cannot be divested by the exercise of the taxing power " on the part of the state a court of equity may enjoin the " collection of taxes upon such lands."

And while it is true that the exemption for which we are contending in this case is not a direct exemption of the property in question by an act of Congress, nevertheless our contention is that the reservation of the harbor areas and submerged lands to the absolute title and ownership of the United States by the acts of Congress aforesaid, did of themselves constitute an exemption from Insular taxation or control of property situated as is that of appellee, where its operations are being conducted entirely in the waters so reserved, and with reference to the submerged

lands which are expressly withheld from any grant to the People of Porto Rico, or to the control of the Insular Government.

One other contention made by appellant with reference to the lack of juridiction of the District Court of the United States sitting as a court of equity in this cause, is to the effect that the local statute which we have quoted does not authorize the institution of such a suit by an individual tax payer who has been aggrieved, but that the statute refers to the illegality of the entire tax and can only be maintained where the object sought is to set aside or invalidate such levy; but we maintain that the language of the statute in question does not in any sense support such contention, but on the contrary its language is so broad as to include any illegal assessment or the collection of any illegal tax or assessment, and the contention made by appellee in the filing of the original bill was as to the illegality of the assessment of any tax upon appellee's property, and as to the illegality of the attempted collection of the tax under such illegal assessment. For instance, the tax itself, the same being the general Insular revenue tax, would undoubtedly be legal as to the property situated within the taxing jurisdiction of the Insular Government, and consequently it is not as against the illegality of the tax itself that we are contending, but the assessment of appellee's property and the attempt to collect the tax under such illegal assessment, is the wrong of which we complain, and which we maintain is clearly covered by the statute in question.

The facts alleged in the bill of complaint present questions which require careful analysis because of the peculiar condition of titles with reference to Porto Rico and the adjacent waters, and at the out set of our discussion of those facts and the application of the law thereto, we invite the attention of the court to the proposition which we believe to be the underlying principle which

must govern in the decision of this controversy, namely,—that the status of public property in Porto Rico, commencing with the Treaty of Peace with Spain and followed by the various acts of Congress, ceding first control and afterwards title to certain portions of the public lands and properties in Porto Rico, but expressly reserving the ownership of certain other portions of such properties compels us to argue the matter entirely irrespective of the decisions of the courts with reference to harbor areas and navigable waters in and about the various States of the Union, and that therefore the various decisions quoted in appellant's brief to maintain the contention that the Insular Government has taxing as well as other jurisdiction over the harbor areas and navigable waters of Porto Rico, cannot be supported by the decided cases relative to the harbor areas and navigable waters in and about the States of the Union.

This principle is especially well illustrated in connection with the case of the National Dredging Company vs the State of Alabama from the Supreme Court of Alabama, reported in 12th Southern Reporter at page 720, and which authority is the one most insistently relied upon by appellant in its contention for the taxing jurisdiction of the State. In that case the Supreme Court of Alabama held that a dredging company operating in the harbor at Mobile, under a contract similar to that held by the appellee, was taxable under the revenue laws of the State of Alabama, but we find that this court had, prior to the time of the decision, expressly held that the State of Alabama was the owner of the navigable waters and soils under them in and about that State.

In the case of Shively vs Bowlby 152nd U. S. page 1, we find at page 27 in said decision a discusion of the title of the State of Georgia to such lands and waters as follows:

In Pollard vs Files 43 U. S 2nd Howard 591, it was " adjudged that upon the admission of the State of Alaba- " ma into the Union, the title to the lands below high

" water mark of navigable waters passed to the State and " could not afterwards be granted away by the Congress " of the United States ,, ,, ,, ,, when Ala- " bama was admitted into the Union on an equal footing " with the original states, she succeeded to all of the " right of sovereignty, jurisdiction and eminent domain " which Georgia possessed at the date of the cession, ex- " cept so far as this right was diminished by the public " lands remaining in the possession of the United States *** " Alabama is therefore entitled to the sovereingnty and " jurisdiction over all the territory within her limits sub- " ject to the common law, to the same extent that Geor- " gia possessed it before she ceded it to the United " States. To maintain any other doctrine is to deny that " Alabama has been admitted into the Union on an equal " footing with the original States, the Constitution, laws " and compact to the contrary notwithstanding. Then to " Alabama belong the navigable waters and soils under " them in controversy in this case subject to the rights " surrendered by the Constitution of the United States."

See 44 U. S., 3 Howard, 228, 229,

This decision so clearly establishes the main point of the controversy now before the court, that we feel jus- fied in assuming that the decision of a State or Federal court, with reference to thé ownership and control which would necessarily involve the jurisdiction over navigable waters, and the lands underlying the same would create an entirely different situation from that which necessari- ly obtains in Porto Rico and waters adjacent thereto, for we find that the Insular Government or the People of Porto Rico have never been granted expressly any control over, title to or interest whatsoever in the navigable waters or harbor areas of Porto Rico, but that on the contrary, Con- gres by its express declaration in both of the acts relating to public property in Porto Rico has expressly reserved both the ownership and control of such waters and submer- ged lands.

In the Organic Law, known as the Foraker Law, apro- ved April 12, 1900, and creating the Insular Government of Porto Rico, at section 13 we find the following:

"That all property which may have been acquired in " Porto Rico by the United States under the cession of " Spain, in said Treaty of Peace in any public bridges, " road houses, water powers, highways, unnavigable " streams and the beds thereof, subterranean waters, mi- " nes or minerals under the surface of private lands, and " and all property which, at the time of the cession belon- " ged under the laws of Spain then in force to the various " Harbor Works Boards of Porto Rico, and of the harbor " shores, docks, slips and reclaimed lands, *but not including* " *harbor areas or navigable waters*, is hereby placed under " the *control* of the government established by this Act, to " be administered for the benefit of the people of Porto " Rico, and the Legislative Assembly hereby created, shall " have authority, subject to the limitations imposed upon " all its acts to legislate with respect to all such matters, " as it may deem adivisable."

This section in the act creating the civil goverment of the Island, by its express terms grants the control of the public properties of Puerto Rico, with certain exceptions, to the action of the local government so established, but by its terms, harbor areas and navigable waters are expressly withdrawn and excluded from such control, consequently it may not be contended that by the terms of this act the Insular Government secured any authority to legislate respecting the control of harbor areas or navigable waters.

But even more significant is the language of the Act of Congress of July 1, 1902, by which a permanent division of the public properties of Porto Rico was created, and under which the President of the United States was authorized to reserve certain public properties for the use of the Federal Government, and by the terms of which all other public property within the Island, not thus reserved was granted to the Government of Porto Rico, to be held or disposed of for the use and benefit of the People of that Island. The reservations provided for by this Act include lands and buildings for navy army, and other federal governmental purposes, and at the same time the Act

contains an express reservation to the United States of the ownership of the harbor areas and lands underlying the same. The language used as to this reservation being as follows:

" And all other public lands and buildings not inclu-
" ding harbor areas and navigable streams and bodies of
" water, and the submerged lands underlying the same,
" owned by the United States in said Island, and not so
" reserved, etc."

Prior to the enactment of this law certain of the public properties, as we have seen, had been placed under the control of the Insular Government by the Foraker Law, but no act granting any title of any kind to any such properties to the Insular Government, or to the People of Porto Rico, was in existence, and this Act of July 1, 1902 made a permanent division of the properties reserved for governmental purposes, and harbor areas, navigable waters and the submerged lands underlying the same, were expressly retained under the ownership of the United States and for federal purpuses.

We are, therefore, met with the broad proposition that the Insular Government has never had any ownership of the harbor areas or the submerged lands underlying the same, and if the Insular Government has any control whatsoever over the same it will be necessary to establish the same from general principles and not by deduction from those authorities cited wherein the State or States seeking to enforce the tax in question was the unquestioned owner of the navigable waters and the submerged lands, subject only to such concessions as had been made to the Federal Government for federal purposes.

In this connection we invite also the Court's attention to the well know case of Henderson Bridge Company vs Henderson, reported in 173 U. S., Supreme Court, page 624. In that case a corporation had been granted the right to build a bridge over the Ohio River connecting the city of Henderson, Kentucky with the shore line of Indiana,

and the controversy was as to the right of the city of Henderson to tax that portion of the bridge which was within the boundaries of the river, and this honorable court, after a full and exhaustive discussion, held that in that case the City of Henderson did have the right to tax the structure in question, placing the decision upon the primary basis that the Ohio river itself to the Indiana shore line was within the limits of the State of Kentucky, and the State being the owner of all lands within is limits and having authorized the City of Henderson to include within its municipal limits that portion of the river where the bridge was constructed; and, furthermore, it being decided that the City of Henderson did have the right and control of police power and other protection over the river, it was held that the tax was justified and should be paid. The Court says, quoting from McCulloch v. Maryland, 4 Wheaton, that the power of taxation was an incident of sovereignty, was co-extensive with that to which it was an incident, and that all subjects over which the sovereign power of state extends are objects of taxation.

The Court then continues: "The subject of taxation in this case is a bridge structure within the territorial limits of Kentucky. It is therefore property over which the State may exercise its authority provided it does not encroach upon Federal power or entrench upon rights secured by the Constitution of the United States". tWe recommend to the Court the reading of this case rather than to attempt to quote from it extensively, as we believe that by analogy it will be seen that if the structure in question in that case had not been held to be within the territorial limits of Kentucky and if the ownership of the lands underlying navigable waters was not vested in such States, that the right of taxation in that case would have certainly been denied .

The basic and underlying principle which must control the determination of this cause is as to the extent of the control or jurisdiction of the Insular Government over

the harbor of San Juan, and in this connection as to whether or not property situated entirely within the harbor area, engaged in operations connected with the lands underlying such harbor area could receive any benefit from the expenditure from moneys raised by the Insular Government from taxation.

In the case of the National Refrigeration Transit Company vs Commonwealth of Kentucky, 199 U. S. 195, Mr. Justice Brown uses the following language:

"After citing certain general principles, subject to " those exceptions, the rule is that in classifying property " for taxation, some benefit to the property taxed is a " controlling consideration, and a plain abuse of this " power will sometimes justify judicial protection inter- " ference."

Norwood vs Baker 172 U. S. 269:

"It is often said protection and payment of taxes are " as relative obligations. It is also essential to the validi- " ty of a tax that the property shall be within the terri- " torial jurisdiction of the taxing power. Not only is the " operation of such laws limited to persons and property " within the boundaries of the State, but property which is " wholly and exclusively within the jurisdiction of ano- " ther State receives none of the protection for which the " tax is supposed to be the compensation."

This doctrine is extensively argued and discussed in the case of Kaysville vs. Ellison from the Supreme Court of Utah and reported in Volume 43 of the Lawyers Reports Annotated, at page 81. We quote from that decision as follows:

"The real estate of the individual may be taken from " him, and transferred to the public, for its use, by con- " demnation under the right of eminent domain, upon " making just compensation; or it may be assessed under " the taxing power, seized, sold, and transferred to another " and the money received may be taken by the public, and " used in paying its officers, in making public improvements, " or used for other public purposes. The method differs, " but the effect upon the individual's right to his property

" is the same. By the former process the public gets the " use of the individual's real estate; by the latter it gets " the use of the money into which the individual's real " estate is converted. The owner cannot be deprived of " his property by either method without just compensa- " tion. By one method he is compensated in money, by " the other he receives his compensation in the protection " the state or city affords him in such benefits. When " the land is taken by the public in pursuance of the right " of eminent domain, compensation, can be determined by " the standard of market value. While there is no stan- " dard by which the pecuniary value of a just government " to the individual can be accurately estimated, we know " its benefits exceed in value the taxes he pays. That value " compensates the individual for them. The merchant's " business, as in this case, is not appropriated to the use of " the public, but the money he pays for the license is. " Undoubtedly Kaysville city has the power to require " any merchant doing business within the range of its " protection and benefits to pay for a license, but it has " no authority to require those doin business outside of " its limits to do so, when the sole purpose and effect of a " tax upon their property or business is the lessening of " the taxes of its people.

" A municipality has no power to collect a tax upon " property or business situated so that it cannot receive " any protection or benefit from it. In such case there " is no compensation for the property taken, though it " may be a species of property termed money. . .

"It may be said that the state has the power to collect " a tax upon all the property within its limits, but in such " case the state is supposed to give protection to all its " people, and to benefit all the property within it borders. " The same may be said of the county. But in this case " the defendant, and others situated as he is, are included " in its limits for the sole purpose of benefitting others. " Their money is given to others without their consent, " without any compensation in municipal benefits or " otherwise. . . . .

The constitutional provision in question was designed, " doubtless, to give effect to that principle; but if the " provision simply forbids the taking of private property " for public use without just compensation, under the

" right of eminent domain, then its authors made the " constitutional rule narrower than the principle upon " which they intended to base it, because the principle " requires compensation in all cases, whether real estate, " money, or any other kind of property is involved; whet- " her it is taken by the methods adopted under the right " of eminent domain, or under the right of taxation, or " by any others means. The principle lies deeper than " mere forms or methods. It would be unreasonable to say " that the authors of the provision in question intended to " forbid the taking under one right without just compen- " sation, and intended to allow such appropriation under " another right; that they intentionally closed one gap, " but intentionally left another down by which the same " wrong, in effect, could be accomplished."

And the same court, in the case of territory of Utah vs. Daniels, reported in Vol. 5 of Lawyers Reports Annotated, at page 444, discusses the same proposition, and we quote from that decision the following:

"Although the power of the Territorial Legislature to " extend municipal boundaries for the purposes of tax- " ation is not expressly limited in the Organic Act, in " view of the fundamental principles upon which all just " taxation proceeds, and of authority, we hold that the " power is not arbitrary. Taxation is the equivalent for " the protection which the government affords to the per- " son and property of its citizens: and as all are alike " protected, so all alike should bear the burden in propor- " tion to the interest secured. Cooley, Const. Lim 4th ed. " 617."

"Upon the principle and authority we are of the opi- " nion: *first*, that municipal taxation shold be limited to " to the range of municipal benefits; *second*, that lands " and their occupants without the range of municipal " benefits should not be taxed to aid those within: *third*, " that a law authorizing the assessment of taxes for mu- " nicipal purposes upon lands or their occupants located " beyond the range of municipal benefits is not a rightful " subjet of legislation: *fourth* that taxation for city pur- " poses should be within the bounds indicated by its " buildings, or its streets and alleys, or other public im- ' improvements, and contiguous or adjacent districts so

" situated as to authorize a reasonable expectation that
" they will be benefitted by the improvements of the city
" or protected by its police; that no outside district
" shoul be included when it is apparent and palpable that
" the benefits of the city to it will only be such as will be
" received by other districts not included, such as will be
" common to all neighboring communities.". .....

"It is a rule of construction that constitutional pro-
" visions designed to protect the rights of life, liberty and
" property should be liberally construed in the light and
" in furtherance of their purpose, It would appear more
" reasonable to interpret the expression "private proper-
" ty in the provision in question as meaning all kinds of
" private property", and the word "taken" as embracing
" the appropriation by any method, and the phrase "just
" compensation" as including any appropriate compen-
" sation whether in money or benefits, providing the com-
" pensation is a just one,—a fair equivalent for the pro-
" perty parted with. It would be equally as just to the
" owner for the government to assess $100 against his
" land and to take it and to give him in return that
" amount in value in the benefits of government, as it
" would be for it to take an acre of his land worth $100
" and to give him in return that amount in money. The
" difference to the owner would be only in the quality of
" the property taken and in the quality of the consider-
" ation, not in the value of the property taken or in the
" value of the consideration received. The benefits of
" the city government to persons and to property within
" their range in the protection it gives, from the im-
" provements it makes, and from the conveniences and
" advantages it furnishes, are regarded as a just compen-
" sation for all taxes paid."

The court then in the same opinión quotes from the case of People vs. Brooklyn, 4 N. Y., 420, as follows:

" The right of taxation and the right. of eminent do-
" main rest substantially on the same foundation. Com-
" pensation is made when private property is taken either
" way. Money is property; taxation takes it for public
" use; and the taxpayer receives, or is supposed to receive,
" his just compensation in the protectión which goverment
" affords to his life, liberty and property, and in the in-

" crease of the value of his possessions by the use to which " the goverment applies the money raised by the tax. " When private property is taken by right of eminent do- " main, special compensation is made, for the reason here- " after stated."....

And Judge Cooley says: "Taxation and eminent domain, " indeed, rest substantially on the same foundation, as " each implies the taking of private property for public " use on compensation made; but the compensation is " different in the two cases. When taxation takes money " for the public use, the taxpayer receives, or is supposed " to receive, his just compensation in the protection which " government affords to his life, liberty and property, and " in the increase in the value of his possessions by the use " to which the government applies the money raised by " the tax, and either of these benefits will support the " burden." Cooley, Const Lim. 4th ed. 620.

The Utah Supreme Court then continues with the following language:

"These two authorities are to the effect that, when the "taking is by taxation, compensation is always implied: that " the taxpayer is supposed to receive just compensation in " the use to which the money is appropriated; and that " such benefits will support the burden. This is equiva- " lent to saying that if the tax is not supported by such " benefits or consideration it must fall. If the taxpayer " and his property are so situated with respect to the " government that it is palpable and clear that the use to " which taxes collected are applied will not benefit him, " then there is not compensation to support the tax. But " they also say that the constitutional provision in ques- " tion has reference to the taking of private property for " public use under the right of eminent domain. They " concede, however, that taxation and eminent domain " rest on the same foundation,—the principle of compen- " sation,—amd that such compensation in case of taxation " is in benefits. The constitutional provision in question " was designed doubtless to give effect to that principle; " but if the provision simply forbids the taking of private " property for public use without just compensation un- " der the right of eminent domain, then its authors made " the constitutional rule narrower than the principle upon

" which they intended to base it, because the principle re-
"quires compensation in all cases, whether real estate, money
" or any other kind of property is involved: whether it is
" taken by the methods adopted under the right of emin-
" ent domain, or under the right of taxation, or by any
" other means. The principle lies deeper than mere forms
" or methods. It would be unreasonable to say that the
" authors of the provision in question intended to forbid
" the taking under one right without just compensation,
" and intended to allow such appropriation under another
" right; that they intentionally closed one gap, but inten-
" tionally left another down by which the same wrong in
" effect could be accomplished. We are of the opinion
" that the constitutional provision considered should be ap-
" plied to the appropriation of private property to public
" use in the form of money under the right of taxation as
" well as the appropriation of real estate or other property
" to such use under the right of eminent domain. This
" conclusion finds support in the following cases. Brads-
" haw v. Omaha, 1 Neb. 16; Cheaney v. Hooser, 9 B.
" Mon. 330; Wells v. Weston, 22 Mo 385; Covington v.
" Southgate, 15 B. Mon. 491; Sharp v. Dunavan, 17; B.
" Mon. 223; Arbegust v. Louisville, 2 Bush, 271; Swift v.
" Newport, 7 Bush, 37; Morford v. Unger, 8 Iowa, 82;
" Langworthy v. Dubuque, 13 Iowa; 86; Fulton v. Daven-
" port, 17 Iowa, 404; Buell v. Ball, 20 Iowa, 282; Deeds v.
" Sanborn, 26 Iowa, 419; Deiman v. Fort Madison, 30
" Iowa, 542."

The doctrine for which we are contending is also strongly stated by Judge Cooley in his work on Taxation, at pages 159, 160, where the conclusión reached by him is: that in order to justify the payment of a tax "*there must be between the State and taxpayer a reciprocity of duty and interest.*"

Indeed, it would seem that it ought not to be necessary to urge or discuss a principle so obvious as that a man may not by deprived of his property, either under the guise of taxation or by any other method without reasonable compensation being made either in the form of direct payment or in the form of benefits accruing from the expenditure of the moneys so collected.

It will be conceded that the operations of apellees, their place of working, the extent and character of the work which they are doing, are absolutely controlled and dictated by the officers of the National Goverment. Suppose that the location of the dredge and other boats while working under the directions of the Federal officials should interfere whith the so-called regulations or rules of the Insular Harbor Master, would the Insular authorities have any power or authority to dictate or in any way to direct the movements or location or character of operations to be done or submitted to by the complainant company, could the Insular Govermen or any of its officials in anywise direct or prohibit any act or operation incident to the work of the complainant company which might be directed by the Federal authorities, and, generally speaking, does the complainant company receive or from the inherent nature and character of its work and its location can it receive any benefit, protection or other consideration from any act of the Insular Goverment? If it has such protection, if it receives any consideration from the taxes it is asked to pay' then it should undoubtedly pay the tax in controversy. But if from the inherent character of its employment and the location where that employment is carried on it is so situated that it would not receive any benefit, either by way of protection or otherwise, from the expenditure of the money raised by Insular taxation, then there would be no consideration for the payment of such taxes; and under the authorities which we have quoted the tax would be void. This we contend is the actual situation.

Suppose that instead of having a contract to dredge the bottom af San Juan Harbor the complainant company had taken a contract from the Federal Government to construct a lighthouse on Fort San Cristobal and for that purpose had brought to Porto Rico boats and material landing the same directly from the sea upon San Cristobal property and upon the operations under such contract the Insular Government should attempt to levy a tax

upon the machinery and instruments used by the company in carrying on its work. We have here as we consider an absolutely parallel case to the one at bar, because we feel that under the law we have demonstrated that the reservation of harbor areas and submerged lands is absolutely identical with the reservation for military, naval and other purposes, and that the same measure of control by the Insular Government exists in the one case that exists in the other. It is well known and was conceded by counsel for the Attorney General in the oral argument in this case, that in the case of those properties which have been absolutely granted to the National Government within the States where by Legislative Act the entire dominion over such property has been ceded to the National Government, that the States lose all right of control or intervention with reference to such properties; and our contention in this matter is that the situation presented by the reservations made by the National Government in Porto Rico is even stronger, because here the properties in question never have been of any other ownership than of the National Government, nor has any right, either of control or of any other character, ever been conceded to the Insular Government by Congress.

In addition to the foregoing considerations we invite the attention of the court to the opinion rendered by the judge of the District Court of the United States for Porto Rico, in overruling the demurrer in this cause which is set forth at length, from folios 13 to 24 of the transcript of the record in this cause, in which opinion the court advances certain other considerations in support of the ruling made, which are not here adverted to at length, and which opinion likewise contains an analysis of the principal decisions relied upon by appellant in support of his contention.

In conclusion we desire to present to the court the question as to whether or not the appeal in this case is proper under the statutes enacted in that behalf. The amount involved in the controversy is Twelve hundred

(1,200) dollars and failing in the jurisdictional amount relating to appeals in this Honorable Court, it must be demonstrated in order to justify an appeal to this Honorable Court and to invoke its jurisdiction that the decision of the point in question involves the construction of a Federal statute. It may be conceded that in some general sense the determination of this controversy might be said to involve a construction of the act of Congress creating and conferring power upon the Insular authorities of Porto Rico, but the real question involved would seem to be more nearly related to the determination of the legality of local legislation passed by the Legislative Assembly of Porto Rico.

We submit the matter to the consideration of the Court feeling that even though the jurisdiction of this Court should be sustained to pass upon the controversy, that the situation presented by the allegations of the bill of complaint fully justify the action of the court below in the issuance of the injunction and that its action in that behalf will be affirmed.

Respectfully submitted,

CHARLES HARTZELL

MANUEL RODRIGUEZ SERRA.

Solicitors for appelleé.

San Juan Porto Rico, February st. 1911.

GROMER, TREASURER OF PORTO RICO, *v.* STANDARD DREDGING COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

No. 174. Submitted February 28, 1911.—Decided April 22, 1912.

Quære: whether § 12 of the act of Legislative Assembly of Porto Rico of March 8, 1906, providing that an injunction may issue to prevent collection of illegal tolls, applies to the District Court of the United States for Porto Rico.

Even though the bill might not be sustained because complainant has an adequate remedy or because the court has not power to issue an injunction, the court prefers, in this case, to rest its decision on the fact that the bill should be dismissed upon the merits.

Under § 13 of the Foraker Act of April 12, 1900, 31 Stat. 77, c. 191, and the act of July 1, 1902, 32 Stat. 731, c. 1383, the Territory of Porto Rico has jurisdiction for taxing purposes over the harbors and navigable waters surrounding Porto Rico.

The purpose of the Foraker Act was to give local self-government to Porto Rico, conferring an autonomy similar to that of the States and Territories, reserving to the United States rights to the harbor areas and navigable waters for the purpose of exercising the usual national control and jurisdiction over commerce and navigation.

While the United States can reserve control over such places as it sees fit within a territory to which it gives autonomy, it does not reserve any such places unless it is so expressed in the act.

Property which has acquired a *situs* within the jurisdiction of the Territory of Porto Rico is not exempt from taxation by the Territory simply because it is exclusively used by the owner for carrying out a contract with the Government.

Where jurisdiction to tax property exists, the validity of the tax cannot be determined by an inquiry as to the extent to which the property may be benefited.

In this case there is nothing in the record to show that the property taxed had not acquired a *situs* in Porto Rico or that takes it out of the rule that tangible personal property is subject to taxation by the State or Territory in which it is, no matter where the domicile of the owner may be.[1]

5 Porto Rico Fed. Rep. 142, reversed.

[1] Mr. Justice Day, with whom Mr. Justice Hughes and Mr. Justice

THE facts, which involve the power of Porto Rico to tax machinery and vessels in the harbor of San Juan engaged in work in pursuance of a contract with the United States, are stated in the opinion.

Mr. Paul Charlton and *Mr. Foster V. Brown*, for appellant.

Mr. Charles Hartzell and *Mr. Manuel Roderiguez-Serra* for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

The question in the case is the power of Porto Rico to tax certain machinery and boats which at the time of the levy of the taxes were in the harbor of San Juan engaged in dredging work in pursuance of a contract of the Standard Dredging Company with the United States Government.

The dredging company filed a bill to enjoin the appellant, Treasurer of Porto Rico, from enforcing the tax. Appellant demurred to the bill for insufficiency and want of equity, which was overruled. He declined to answer, and the injunction which had been granted was made perpetual. This appeal was then taken.

The material allegations of the bill are as follows:

The dredging company is a Delaware corporation, with its principal office and place of business at the city of Wilmington, State of Delaware. Gromer is Treasurer of Porto Rico.

That theretofore and prior to April 1, 1908, the dredg-

Lamar concurred, dissented solely on this point (see p. 373, *post*) on the ground that the decision of the court below that the property had not acquired a *situs* in Porto Rico was correct and was sufficient to sustain the judgment.

ing company entered into a contract with the United States Government to dredge certain portions of the harbor of San Juan and the channel leading from the ocean to the harbor area. Prior to that date, for use in connection with its operations under the contract, it brought to the harbor one dredge, one tugboat, two scows for dumping material to be removed, one coal scow and one launch. The boats and machinery are its property and have been constantly used by it in the performance of its contract, and were not used in connection with any other business or operations, and were at all times within the harbor where the operations under the contract were carried on. The dredging company has neither conducted nor carried on any other business in Porto Rico or the waters adjacent thereto except its operations under the contract.

Gromer, as Treasurer of Porto Rico, pretending to act under the revenue laws of Porto Rico, assumed to assess and levy on the said property as of the value of $75,000 a tax of $1,200, for the fiscal year 1908–9, and he and his agents "have levied an embargo on part of said property . . . and are threatening to foreclose the same and to sell the property for the purpose of enforcing the collection of the said alleged tax."

The tax is illegal and its enforcement will be illegal by virtue of the laws of the United States and of Porto Rico, and especially by virtue of the acts and proclamations of Congress and of the President of the United States creating reservations in and about the island of Porto Rico. The insular government of Porto Rico is not authorized to levy or collect any tax in connection with property the *situs* of which is within the reservation or within any navigable waters of harbor areas of the island of Porto Rico. The property of the company has not been brought within the jurisdiction of the insular government, nor is it subject to taxation while being employed in the perform-

ance of the contract with the United States and within the harbor area.

It is alleged that the company is without any remedy at law, and an injunction is therefore prayed.

In support of his demurrer appellant contends that the dredging company had an adequate remedy at law and that § 12 of the act of the Legislative Assembly of Porto Rico, approved March 8, 1906 (Acts 1906, p. 86 at 89), which provides that an "injunction may be issued to prevent the illegal levying of any tax, duty or toll, or for the illegal collection thereof, or against any proceeding to enforce such collection . . ." does not apply to the District Court of the United States for Porto Rico. We, however, pass the contention, as we prefer to rest our decision on the merits.

The bill of the dredging company, and its contentions here, are based on two propositions: (1) the property was not within the jurisdiction of Porto Rico but was within the harbor area reserved by the United States; (2) the property was being used "within the harbor area" in the performance of a contract with the United States and therefore not subject to taxation for insular purposes.

To sustain the first proposition § 13 of the Foraker Act (April 12, 1900, 31 Stat. 77, c. 191) is relied on and the act of Congress of July 1, 1902 (32 Stat. 731, c. 1383).

Section 13 (31 Stat. 80) reads as follows:

"That all property which may have been acquired in Porto Rico by the United States under the cession of Spain in said treaty of peace in any public bridges, road houses, water powers, highways, unnavigable streams, and the beds thereof, subterranean waters, mines, or minerals under the surface of private lands, and all property which, at the time of the cession belonged, under the laws of Spain then in force, to the various harbor works boards of Porto Rico, and of the harbor shores, docks, slips, and reclaimed lands, *but not including harbor areas or*

navigable waters, is hereby placed under the *control* of the government established by this Act to be administered for the benefit of the people of Porto Rico; and the legislative assembly hereby created shall have authority, subject to the limitations imposed upon all its acts, to legislate with respect to all such matters as it may deem advisable." [Italics ours.]

Under the act of Congress of July 1, 1902, a division of the public properties of Porto Rico was made under which the President of the United States was authorized to reserve certain public properties for the use of the Federal Government. The properties not reserved were granted to the Government of Porto Rico to be held or disposed of for the use and benefit of the people of the island. The reservations included lands and buildings for army and navy and other Federal governmental purposes. The exception of harbors and navigable streams was as follows:

"And all the public lands and buildings, not including harbor areas and navigable streams and bodies of water and the submerged lands underlying the same, owned by the United States in said island and not so reserved," etc.

Considering these provisions alone it is, we think, manifest that they only provide for proprietary reservations and dispositions and not for limitations upon the exercise of government. This conclusion is confirmed by § 1 of the Foraker Act, which provides that the provisions of the act "shall apply to the Island of Porto Rico and to the adjacent islands and waters of the islands lying east of the seventy-fourth meridian of longitude west of Greenwich, which were ceded to the United States by the Government of Spain by treaty entered into on the tenth day of December, eighteen hundred and ninety-eight; and the name Porto Rico, as used in this Act, shall be held to include not only the island of that name, but all of the adjacent islands, as aforesaid."

As early as 1901 the control by the Government of the

United States over Porto Rican waters came up for consideration and was referred by the Secretary of War to the Attorney General for determination. The elements in question were the River and Harbor Act of 1899 (March 3, 1899, 30 Stat. 1151, c. 425) and the act of April 12, 1900, "temporarily to provide revenues and a civil government for Porto Rico, and for other purposes." 31 Stat. 77, 80. Section 14 of the latter act provided, with certain exceptions, that the statutory laws of the United States not locally inapplicable should have the same force and effect in Porto Rico as in the United States. Section 13 provided that certain harbor property which at the time of the cession belonged, under the laws of Spain, to the various Harbor Works Boards of Porto Rico, "but not including harbor areas or navigable waters," should be "placed under the control of the government established by this act and to be administered for the benefit of the people of Porto Rico." The Legislative Assembly created by the act was given authority "to legislate with respect to all such matters" as it might deem advisable, and this authority was extended to all matters of a legislative character not locally inapplicable. It was further provided that all laws should be referred to Congress, which reserved the power to annul the same.

The River and Harbor Act of March 3, 1899 (30 Stat. 1121, 1151, c. 425) prohibited unauthorized obstructions to navigation in any of the waters of the United States, and provided for control by the Secretary of War of wharves and similar structures in ports and other waters of the United States.

The Attorney General expressed the opinion that under these statutes the coastal waters, harbors and other navigable waters of the island were waters of the United States and that a license granted by the Secretary of War to build a wharf in the harbor, given before the ratification of the treaty with Spain, was valid, and that the

power under the license to rebuild the wharf, which had been destroyed by fire, continued as against the control of the Executive Council of Porto Rico. Commenting on the provisions of the River and Harbor Act and the acts in regard to Porto Rico, it was said that Congress, since the ratification of the treaty with Spain, has nowhere indicated that Porto Rican waters are not to be regarded as waters of the United States, nor directed that the authority of the Secretary of War, under the River and Harbor Act of 1899, shall not extend to the Porto Rican waters. "On the contrary, Congress has used language in the Porto Rican Act, as, for instance, in section 13, which clearly contemplates national jurisdiction over those waters as waters of the United States." 23 Op. Atty. Genl. 551. In other words, the jurisdiction of the United States over those waters was the jurisdiction that the United States had over all other navigable waters, an exercise of which the River and Harbor Act was an example.

This is made clear by a subsequent opinion, in which it was declared "that Congress had committed to local control, subject to the express limitation upon the local legislative power, the administration of certain public property and utilities, including 'harbor shores, docks, slips, and reclaimed lands,' but excluding 'harbor areas or navigable waters.'" And, speaking of §§ 12 and 13 of the Porto Rican Act of April 12, 1900, it was said that the "obvious implication" from them is "that the General Government retains title to, possession of, and control over certain other public property, of which fortifications and their appurtenances are specified, and also reserves for its own administration the usual national powers over lights, buoys, and other matters affecting navigation or 'works undertaken by the United States.'" And it was said, further: "From all this it is certain that the ordinary national control of the marine belt affects the coastal

waters of Porto Rico as well as those of any State or any other Territory of the United States." But as to the "harbor margins" it was said that "the Government of the United States, by reason of these grants . . . to Porto Rico, is in the same position with reference to the island government, as well as to private owners, as it would be in a similar case affecting a State of the United States." 23 Op. Atty. Genl. 564, 566.

From this principle it was concluded that the United States could not appropriate the islands of Culebra for a naval base, they being within the limits described in § 1 of the act of April 12, 1900. And § 1 of that act is identical with § 1 of the Foraker Act and its provisions for "harbor areas and navigable waters" are the same as in the Foraker Act. The views of the Attorney General, therefore, are expressly applicable, for the language of the act of April 12, 1900, which determined them, was repeated in the Foraker Act, which we are now called upon to consider.

The distinction made between local control of property and the exercise of government is a substantial one and is illustrated in cases. *Shively* v. *Bowlby*, 152 U. S. 1, 30; *Thomas* v. *Gay*, 169 U. S. 264; *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525; *Id.* 542; *Western Union Telegraph Co.* v. *Chiles*, 214 U. S. 274, 278; *Reynolds* v. *People*, 1 Colorado, 179, 181; *Scott* v. *United States*, 1 Wyoming, 40; *Territory* v. *Burgess*, 8 Montana, 57.

We have seen that by § 1 of the Foraker Act all of its provisions are made applicable to a certain defined area, and that the name Porto Rico "shall be held to include not only the island of that name, but all adjacent islands and waters of the islands." The governmental powers conferred upon Porto Rico must be coextensive with that area, subject to the reservation that all laws passed shall not be in conflict with the laws of the United States, and the power of enacting such laws is conferred upon the Legislative Assembly. There is precaution against abuse.

They must be reported to Congress, which has the power to annul them.

The purpose of the act is to give local self-government, conferring an autonomy similar to that of the States and Territories, reserving to the United States rights to the harbor areas and navigable waters for the purpose of exercising the usual national control and jurisdiction over commerce and navigation.

The United States could have reserved government control and exercised it as it does in instances, by the consent of the States, over certain places in the States devoted to the governmental service of the United States. We do not think, as we have said, that the United States has done so, and that it has not is the view of the executive department of the Government as expressed through the Attorney General. The War Department entertained the same view as to military reservations in Porto Rico and also as to such reservations in the Philippine Islands.

Section 12 of the Philippine Act placed all property rights acquired from Spain under the control of the island government for the benefit of its inhabitants, except "such land or other property as shall be designated by the President of the United States for military and other reservations for the Government of the United States." The extent of the power thus reserved was referred for consideration by the Secretary of War to the Attorney General, and in an opinion written by Solicitor General Hoyt and approved by Attorney General Moody it was held that the provisions granted and reserved property, but did not confer governmental jurisdiction. It was said in the course of the opinion, after referring to the provisions of the Philippine Act which directed that all laws passed by the Philippine Government should be reported to Congress and the reservation by Congress of the power to annul the same (a similar provision is in the Porto Rico

Act), that "the relation of Congress to all territorial legislation is similar [certain organic acts of the States being cited], and thus it may be said that the exercise of local jurisdiction for ordinary municipal purposes over a reservation in a territory is valid until and unless disapproved by Congress." 26 Op. Atty. Genl. 91, 97.

There is an allegation in the bill that the property was not "subject to any lien or burden of taxation while being employed in the performance of its said contract with the United States of America and within the said harbor area." It is not clear what is meant by the allegation. So far as it means that the property is an instrument of the National Government and not subject, therefore, to local taxation, the contention cannot prevail. *Baltimore Ship Building & Dry Dock Co.* v. *Baltimore*, 195 U. S. 375, 382. Indeed, the contention is a very broad one and would seem to be independent of the situation of the property, and, if true at all, would apply to property employed in the service of the United States, wherever situated and no matter to what extent employed. Appellant discusses it somewhat. We shall consider it in the aspect presented by appellee. Counsel say that "the basic and underlying principle which must control in the determination of the case is as to the extent of the control or jurisdiction of the insular government over the harbor of San Juan, and in this connection as to whether or not property situated entirely within the harbor area, engaged in operations connected with the lands underlying such harbor area, could receive any benefit from the expenditure from moneys raised by the insular government from taxation."

There is a confusing mixture of elements. If Porto Rico had jurisdiction over the harbor area it had jurisdiction to tax property which was situated in the harbor, no matter how engaged; and, being so situated, the validity of the tax upon it cannot be determined by an inquiry of

the extent it may be benefited. *Thomas* v. *Gay, supra; Wagoner* v. *Evans*, 170 U. S. 588.

It, however, may be said that the property was only temporarily in the waters of Porto Rico and that its *situs* was at the domicile of the dredging company.

The fact is not alleged, and no other fact which removed the property from the application of the rule that tangible personal property is subject to taxation by the State in which it is, no matter where the domicile of the owner may be. *Old Dominion Steamship Co.* v. *Virginia*, 198 U. S. 299, 305.

The allegation is that prior to the first of April, 1908, the property was brought to and within the harbor of San Juan. The date is that of the assessment and levy of the tax, but whence the property had been brought, or how long it had been in the harbor before the levy of the tax, is not averred, nor was it necessary from the purpose of the cause of action alleged. There is not an intimation that the property had its *situs* for taxation elsewhere. The claims of exemption from the tax, and the only claims of exemption, were: (1) That Porto Rico, by virtue of the laws of the United States and of Porto Rico, and especially by virtue of those acts and proclamations of Congress and of the President of the United States creating reservations in and about the Island of Porto Rico, was "not authorized to levy or collect any tax in connection with property the *status* [*situs?*] of which" was "within such reservation, or within any navigable waters or harbor areas of the said island of Porto Rico." (2) That the property was not subject to taxation "while being employed in the performance of" the dredging company's "contract with the United States of America and within the said harbor area."

These allegations are, as we have already seen, the basis of the contentions made and argued by the company. It is true that after discussing them counsel "in-

vite the attention of the court" to "certain other considerations" expressed in the opinion of the court below. To analyze or summarize the opinion would extend our discussion unduly. Elements that are really independent are mingled somewhat, making it difficult to assign the exact strength given to them respectively, but we think the basis of the decision was, as it is of the contentions discussed by counsel for the company, that the property was not subject to the taxing power of Porto Rico because of its situation within the harbor area and because the title to such area had been reserved to the National Government, an untenable position, as we have seen.

Decree reversed, with directions to sustain the demurrer and dismiss the bill.

MR. JUSTICE DAY, with whom concurred MR. JUSTICE HUGHES and MR. JUSTICE LAMAR, dissenting.

We are unable to concur in the judgment just pronounced. The reversal of the judgment below is, in our view, inconsistent with decisions heretofore made in this court concerning the power of taxation.

We agree with the decision of the court that the Territory of Porto Rico has jurisdiction for taxing purposes over the harbor and waters in question and that the use of the property for Government purposes does not exempt it from taxation, and therefore do not dissent from anything that is said in the opinion of the court upon those subjects. Our objection to the judgment of reversal is that, as we see it, there is a ground of decision in the court below, ample to sustain its decree, which does not turn upon the determination of the controversy as to the political jurisdiction over these waters. In our opinion, the property of the Dredging Company had not acquired a taxable *situs* within the jurisdiction of the Territory of Porto Rico.

The case was heard upon demurrer, and we must therefore take the allegations of the bill well pleaded to be true. From them it appears that prior to the first day of April, 1908, complainant company, a corporation of the State of Delaware, having its principal office and place of business at Wilmington, in that State, entered into a contract with the United States to perform certain services in connection with the dredging of portions of the harbor of San Juan, Porto Rico, and the channel leading from the ocean to the harbor. The bill alleges:

"That by virtue of the requirements of the said contract your orator did, prior to the said first day of April, 1908, bring to and within the said harbor area of the said harbor of San Juan certain boats and machinery, to be used by it in connection with its operations under the said contract, to wit, one dredge, one tugboat, two scows for dumping material to be removed, one coal scow and one launch. That the said machinery and boats so brought by the said complainant and used in connection with its operations under said contract in the said harbor area of the harbor of San Juan were and are the property of the said complainant Company, and since the same were so brought to the said harbor area the same have been constantly used by the said complainant and engaged in its operations in carrying out its said contract with the said the United States; and the same have not been used in connection with any other business or operations whatsoever, and the same have at all times been entirely within the said harbor areas where the said operations under said contract were so being carried on. And your orator further states that it has not conducted or carried on any business in Porto Rico or in the waters adjacent thereto, except the said operations under the said contract with the United States aforesaid."

It is further alleged that on the first day of April, 1908, the taxing officer of Porto Rico undertook to levy a tax

of $1,200 upon a valuation of the property at $75,000, under the laws of the Territory, as of that date.

The case was submitted upon briefs without argument. In the brief of the Attorney General, as well as that of the appellee, the question principally argued concerns the jurisdiction of the Territory of Porto Rico over the harbor and waters of the bay. In the brief of the Attorney General argument is made and cases are cited to sustain the claim that the *situs* of the property for the purposes of taxation was within the jurisdiction of the Territory. In the brief submitted by the appellee reference is made to the opinion of the court for additional reasons for supporting the decree, which reasons are not adverted to at length in the brief. In the opinion of the court the allegations of the bill are treated, as might rightly be done, as raising the question of taxable *situs* of this property, and, among other things, the judge says (p. 146):

"It has, we think, been settled by numerous recent decisions of the Supreme Court of the United States, that the old rule of personal property following the domicil of the owner has been so varied and departed from as that it does not mean very much at the present time; the real question to be decided in every such case being whether the personal property—be the same rolling stock, machinery, merchandise, or even floating property, such as steamships, boats, or dredges—has been brought within the taxing jurisdiction of the government attempting to levy the tax. In other words, it must always be determined that the *situs* of the property is within the taxing jurisdiction. See *Old Dominion Steamship Co.* v. *State of Virginia*, 198 U. S. 299, and the many cases cited. Also *Ayer & Lord Tie Co.* v. *State of Kentucky*, 202 U. S. 409, and cases cited, and *Metropolitan Life Insurance Company* v. *New Orleans*, 205 U. S. 395, and citations."

After consideration of the subject the court reached the conclusion, not only that the local government of Porto

Rico had no jurisdiction over the harbor and waters where this work was done, but that the property had no taxable *situs* in Porto Rico. See pp. 154 and 155, Vol. V, Porto Rico Federal Reporter.

It is well settled that property outside of the jurisdiction of a State cannot be taxed within the due process clause of the Fourteenth Amendment. *Louisville &c. Ferry Co.* v. *Kentucky*, 188 U. S. 385; *Delaware, L. &c. R. R. Co.* v. *Pennsylvania*, 198 U. S. 341; *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194.

As a general rule, in the absence of a *situs* elsewhere, the domicile of the owner is the place where personalty is taxable. As was said in *Tappan* v. *Merchants' National Bank*, 19 Wall. 490, by Mr. Chief Justice Waite, speaking for the court (p. 499):

"Personal property, in the absence of any law to the contrary, follows the person of the owner, and has its *situs* at his domicile. But, for the purposes of taxation, it may be separated from him, and he may be taxed on its account at the place where it is actually located. These are familiar principles, and have been often acted upon in this court."

To the same effect, see *St. Louis* v. *Wiggins Ferry Co.*, 11 Wall. 423; *Bristol* v. *Washington County*, 177 U. S. 133; *Ayer & Lord Tie Co.* v. *Kentucky*, 202 U. S. 409.

In *Buck* v. *Beach*, 206 U. S. 392, this court, while recognizing the rule of taxable *situs* of personal property as distinguished from the domicile of the owner, held that notes temporarily within a State, although in the possession of an agent of the owner and there held for collection, were not within the taxing power, where the owner lived elsewhere.

It requires a showing that the property sought to be taxed is incorporated in or commingled with the property of the taxing authority, before it can become liable to taxation in any other jurisdiction than that of the domicile

of the owner. *Commonwealth* v. *American Dredging Co.*, 122 Pa. St. 386 (see *infra*).

The decisions in this court indicate that personal property of a tangible character, to become taxable, must have acquired a *situs* of a permanent nature within the jurisdiction of the authority seeking to levy the tax. The use of the term "permanent" in this connection may not mean the continued and unchangeable location of the property at a given place, but certainly does intend to include the idea of location which is not of a temporary or fleeting character.

As was said by this court in *Morgan* v. *Parham*, 16 Wall. 471, 476, in declaring that a vessel engaged in interstate commerce was not subject to taxation in the city of Mobile, Alabama, although it was physically within the limits of the city in the course of navigation:

"It is the opinion of the court that the State of Alabama had no jurisdiction over this vessel for the purpose of taxation, for the reason that it had not become incorporated into the personal property of that State, but was there temporarily only."

In *Old Dominion Steamship Co.* v. *Virginia*, 198 U. S. 299, it was held that certain vessels engaged in interstate commerce and registered outside of the State of Virginia were taxable in that State, it appearing that they were continuously used in navigating the waters of that State. Of that case this court said in *Southern Pacific Co.* v. *Kentucky*, 222 U. S. 63, 72:

"The case of *The Old Dominion Steamship Company* v. *Virginia*, affords an instance of where the domicile of the owner as a taxing situs was held to have been lost and a new taxing *situs* acquired by reason of a permanent location within another jurisdiction. But in that case the judgment was rested upon the fact that the vessels had for years been continuously and exclusively engaged in the navigation of the Virginia waters, which State had

thereby acquired jurisdiction for imposing a tax as upon property which had become incorporated into the tangible property within her territory."

In *Ayer & Lord Tie Co.* v. *Kentucky, supra,* this court had occasion to consider the taxation of vessels plying between the ports of different States, and it was held that where a vessel has acquired an actual *situs* in a State other than that which is the domicile of the owner, it may be taxed, because it is within the jurisdiction of the taxing authority, and, after reviewing the previous cases in this court, Mr. Justice White, speaking for the court, said (p. 423):

"But, if enrollment at that place was within the statutes, it is wholly immaterial, since the previous decisions to which we have referred decisively establish that enrollment is irrelevant to the question of taxation, because the power of taxation of vessels depends either upon the actual domicil of the owner or the permanent *situs* of the property within the taxing jurisdiction."

As was said in one of the latest of this court's deliverances upon the subject, *Metropolitan Life Ins. Co.* v. *New Orleans,* 205 U. S. 395, "but personal property may be taxed in its permanent abiding place, although the domicile of the owner is elsewhere."

And in the latest deliverance of this court upon the subject, *Southern Pacific Co.* v. *Kentucky, supra,* decided at this term, the principle is again stated and applied, that tangible personal property, unless it has acquired an actual *situs* elsewhere, is taxable at the domicile of the owner.

In all the cases to which our attention has been called, decided in this court, the idea of permanency in the abiding place is emphasized as essential to taxable *situs*—that is, the property sought to be taxed must become "commingled" with the property of the State (*Old Dominion Steamship Co.* v. *Virginia, supra*), or "intermingled" with

the general property of the State (*Delaware, L. &c. R. R. Co.* v. *Pennsylvania, supra*), or "permanently located" there (*Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194), or "incorporated in" the local property (*Southern Pacific Co.* v. *Kentucky, supra*). All these expressions indicate the idea of a permanent *situs* of the property.

The question then comes to this: When the Porto Rico authorities, on the first of April, 1908, undertook to levy this tax upon the dredging outfit, had it acquired a *situs* in that jurisdiction for the purpose of taxation? Answering this question, we must bear in mind that there is no showing that the property was permanently located in San Juan harbor, in the sense we have indicated, but that, on the contrary, it appears it was brought into Porto Rico for the purpose of carrying out a Government contract upon which the owner of the property had entered at the time of the attempted taxation; that it was not used in connection with any other business or operation whatsoever, but had been continuously and entirely engaged in carrying out the contract for which it was taken to Porto Rico, and that the owner of the property had not engaged in any operations in Porto Rico or the waters thereof, except only those under the contract with the United States.

Tangible personal property is taxable at the owner's domicile, except where it is shown to have an actual *situs* elsewhere, and, as we have seen, actual *situs* is not gained when the property comes only temporarily within the taxing jurisdiction. Applying this test, we are of the opinion that this dredging outfit had not become incorporated into the personal property of the Territory of Porto Rico, as manifestly it was there temporarily only. In our judgment this situation falls far short of a location in Porto Rico sufficient to subject it to the taxing power of that Territory.

The cases relied upon and cited in the brief of the At-

torney General of Porto Rico, *National Dredging Co.* v. *The State*, 99 Alabama, 462, and *North Western Lumber Co.* v. *Chehalis County*, 25 Washington, 95, are entirely different in their facts.

In the Alabama case the dredging outfit was held presumably to be in Mobile Bay for the purpose of carrying out a series of contracts in the line of the dredging company's business. The court says (p. 465):

"Indeed, as appears from this record, other property of the same kind, which had previously been used by residents of Alabama in the prosecution of this work, was purchased by the appellant company, and, being incorporated with that involved here, has all along been used like it in dredging the channel of Mobile Bay, and one scow so used was built in the city of Mobile, and has never been, we assume, outside of the State."

And the court further says (p. 466):

"In other words, taking into consideration the business of the corporation, the amount and continuing character of the work to be done in Mobile Bay, the preparations made by the company for doing so much thereof as is authorized under one annual appropriation, it may be that this property will be for years engaged upon this work, as a part of that now being used by the company of like kind with this had been used thereon for a year or years prior to 1891. On this state of the case—or even leaving out of view the considerations last adverted to—it is clear, we think, that this property is not merely temporarily within Alabama, but that, to the contrary, its presence here is for such an indefinite period as involves the idea of permanency, in the sense in which that term is used with respect to the *situs* of property for the purposes of taxation."

In the Washington case, the property sought to be taxed was certain tugboats, which were claimed to be exempt from taxation because they were registered at a

port in another State. The evidence disclosed that these tugs had been in use in the State of Washington from four to seven years and not elsewhere, and that the only absence of the tugs from the harbors of that State was for the temporary purpose of repairs, and further, that they were used for all those years appurtenant to and as a part of the lumber plant and business of the lumber company in the county and State where taxed. Under such circumstances the Supreme Court of Washington held that the tugs were permanently in Washington, transacting a local business, and had acquired a taxable *situs* within that State.

A statement of these cases readily distinguishes them from the one at bar. In the case now before us it was sought to tax the dredging property upon its removal from the domicile of its owner for the performance of a single contract and for the transaction of no other business whatsoever, and presumably, as the court below said, not to remain in the jurisdiction beyond the term of the contract for which it was used. To tax property in this situation, it seems to us, would be extending the doctrine of taxable *situs* elsewhere than at the owner's domicile beyond any authority shown, and certainly beyond the reason of the rule. If property thus located could be taxed, the same principle would permit the taxing of a dredging outfit upon the Great Lakes of the country, frequently moving from port to port, in the performance of dredging contracts, in every jurisdiction where it might temporarily be, as well as at the domicile of the owner, where such property could unquestionably be reached.

In *Commonwealth* v. *American Dredging Co.*, *supra*, where a dredging outfit was specifically involved, the Supreme Court of Pennsylvania held that so much of the capital stock of the corporation as was invested in the State of New Jersey in a dredging outfit, namely, $92,000 in four dredges which were built outside of the State of

Pennsylvania, three of which had never been within the limits of that State and the fourth of which had never been within its limits until after the end of the year; $6,000 in a tug which was built outside of the State of Pennsylvania and was not within its limits during the year, and $38,500 in eleven scows, built outside of the State of Pennsylvania and never within its limits, the property all being employed for corporate purposes in the States of New Jersey, Maryland and Virginia, was nevertheless subject to taxation in the State of Pennsylvania, which was the domicile of the American Dredging Company, the owner of the property. In reaching that conclusion Mr. Justice Paxson, who spoke for the court, said (p. 391):

"It must be conceded that the property in question must be liable to taxation in some jurisdiction. If it were permanently located in another state, it would be liable to taxation there. But the facts show that it is not permanently located out of the state. From the nature of the business, it is in one place to-day and another to-morrow, and, hence, not taxable in the jurisdiction where temporarily employed. It follows that if not taxable here, it escapes altogether. The rule as to vessels engaged in foreign or interstate commerce is that their situs, for the purpose of taxation is their home port of registry, or the residence of their owner, if unregistered. *Pullman Palace Car Co.* v. *Twombly*, 29 Fed. Rep. 66; *Hays* v. *Pacific Mail Steamship Co.*, 17 How. 596.

"These vessels, if they may be so called, were not registered. Hence their *situs* for taxation is the domicil of the owners. This rule must prevail in the absence of anything to show that they are so permanently located in another state as to be liable to taxation under the laws of that state."

That case was commented on in the opinion of this court in *Delaware, L. &c. R. R. Co.* v. *Pennsylvania*, *supra*, in which it was held that the capital stock of a corporation

represented by property in stocks of coal which had been sent out of the State and were deposited in other States for sale could not be taxed.

Of the *Dredging Company Case*, Mr. Justice Peckham, speaking for this court, said (p. 356):

"Such property is entirely unlike the property involved in *Commonwealth* v. *American Dredging Co.*, 122 Pa. St. 386. That property consisted of vessels, or scows, or tugs, only temporarily out of the State of Pennsylvania, for the purpose of engaging in business, and liable to return to the State at any time, and was without any actual *situs* beyond the jurisdiction of the State itself."

We think, therefore, that the property in question was taxable in Delaware at the domicile of the owner, and we agree with the District Court in its conclusion that it had not acquired a taxable *situs* in Porto Rico.

For this reason we dissent from the judgment of the court.